



## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

[Docket #: RBS-21-Business-0036]

### Notice of Funding Opportunity for the Food Supply Chain Guaranteed Loan Program

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice

**SUMMARY:** The Rural Business - Cooperative Service (Agency), an agency of the United States Department of Agriculture (USDA) Rural Development mission area (RD) announces the availability of approximately \$1,000,000,000 in loan guarantees, applicant and application requirements, and servicing requirements under the Food Supply Chain (FSC) Guaranteed Loan Program for fiscal year (FY) 2022. Loan guarantees will be made to lenders to facilitate financing to qualified borrowers and projects for the start-up or expansion of activities in the middle of the food supply chain, particularly the aggregation, processing, manufacturing, storage, transportation, wholesaling, or distribution of food, to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain.

**DATES:** Completed applications may be submitted beginning [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Awards will be made no earlier than [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Applications will be accepted until funds are exhausted.

**ADDRESSES:** You are encouraged to contact the Agency to discuss your project and ask any questions about the program or application process. Applications will only be accepted electronically by following the directions provided at <https://www.rd.usda.gov/foodsupplychainloans>.

Entities wishing to apply for assistance may download the application documents and requirements delineated in this notice from:  
<https://www.rd.usda.gov/foodsupplychainloans>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hudson, Rural Business - Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue, S.W., Mail Stop 3201, Room 5801 -South, Washington, D.C. 20250-3201; [rdfoodsupplychainloans@usda.gov](mailto:rdfoodsupplychainloans@usda.gov), or phone 715-345-7636.

**SUPPLEMENTAL INFORMATION:**

All applicants are responsible for any expenses incurred in developing their applications.

The lender is responsible for assuring that all requirements for making, securing, servicing, and collecting the loan have been met.

Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms and regulations referenced in this notice may be obtained from any Agency office and from the USDA RD web site at <https://www.rd.usda.gov/foodsupplychainloans>.

**Overview**

*Federal Agency Name:* Rural Business - Cooperative Service

*Funding Opportunity Title:* Food Supply Chain Guarantee Loan Program

*Announcement Type:* Initial Notice

*Assistance Listing Number:* 10.380

*Dates:* Applications will be accepted beginning **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Application acceptance will continue until all funds are expended.

*Administrative:* Applicants are encouraged to consider projects that will advance the following key priorities (additional information on the key priorities is available at <https://www.rd.usda.gov/priority-points>):

- Assisting rural communities recover economically from the impacts of the COVID-19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

In addition, the Agency highlights the importance of strengthening resiliency of the broader food supply chain, including through addressing current supply chain related disruptions. The Agency will consider applications as they are submitted. If available funding is less than what is requested by applications under consideration, the Agency will score each eligible application based on the point system described herein. When applications on hand have the same priority score, the Agency will give preference to applications involving guaranteed loans from veterans.

Hemp Related Projects: Please note that no assistance or funding from this program can be provided to a hemp producer unless they have a valid license issued from an approved State, Tribal or Federal plan as per section 10113 of the Agriculture Improvement Act of 2018, Public Law 115–334. Verification of valid hemp licenses will occur at the time of award.

## **A. Program Description and Overview**

(a) *Purpose of the program.* Food Supply Chain (FSC) guaranteed loans are available to qualified applicants and projects to facilitate financing for the start-up or expansion of activities in the middle of the food supply chain, particularly the aggregation, processing, manufacturing, storing, transporting, wholesaling, or distribution of food, to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain. As reflected in the public comments to AMS-TM-21-0034, *Supply Chains for the Production of Agricultural Commodities and Food Products*, 86 FR 20652 (April 21, 2021), financing for infrastructure as a strategy to strengthen the food supply chain was identified as a need not only for small and mid-sized meat and poultry processors, but across other stages of the food supply chain, including distribution and aggregation.

This program will expand access to financing for food systems infrastructure in the near term and will serve as a pilot program to inform the other programs authorized under Section 1001 of the American Rescue Plan Act of 2021 (American Rescue Plan Act). This program will facilitate access to affordable capital to address the ongoing need for food systems enterprises in America's rural and urban communities, as there are no geographic restrictions.

(b) *Statutory authority.* Section 1001(b)(4) of the American Rescue Plan Act authorizes the Secretary of Agriculture to "... make loans and grants and provide other assistance to maintain and improve food and agricultural supply chain resiliency." Given this authority, and appropriation provided for this purpose in Section 1001, Paragraph (a), \$100 million in budget authority is being made available for the Food Supply Chain Guaranteed Loan Program.

(c) *Notice overview.*

(1) This notice contains general provisions for making and servicing FSC loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(2) The lender is responsible for assuring compliance with all requirements for making, securing, servicing, and collecting repayment on guaranteed loans.

(3) Whether specifically stated or not, whenever Agency approval is required, the lender is obligated to obtain written approval from the Agency.

(4) All forms and regulations referenced in this notice may be obtained from the USDA Rural Development Web site at <https://www.rd.usda.gov/foodsupplychainloans>.

(d) *Definitions.* The following definitions are applicable to this notice:

*Administrator.* The Administrator of Rural Business–Cooperative Service within the Rural Development mission area of the U.S. Department of Agriculture.

*Affiliate.* A person where one of the following circumstances exists:

(1) The person controls or has the power to control another person, or a third party or parties controls or has the power to control both. Factors such as ownership, management, current and previous relationships with or ties to another person, and contractual relationships, shall be considered in determining whether affiliation exists. It does not matter whether control is exercised, so long as the power to control exists. Entities owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Native Hawaiian Organizations (NHOs) or wholly owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other entities owned by these entities solely because of their common ownership or common management.

(2) There is a family relationship and identical or substantially identical business or economic interests amongst persons (such as where an immediate family member operates entities in the same or similar industry in the same geographic area); however, a

person may rebut such determination with evidence showing that the business or economic interests are not identical or substantially identical.

*Agency.* The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the Food Supply Chain Guaranteed Loan Program.

*Arm's-length transaction.* A transaction in which the buyer and seller act independently and have no relationship to each other. The concept of an arm's length transaction allows the market to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

*Assignment Guarantee Agreement.* A signed, Agency-approved agreement among the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or note from the lender to the holder.

*Bond.* A form of debt security in which the authorized issuer (borrower) owes the bond holder (lender) a debt and is obligated to pay interest at specified intervals and repay the principal at a specified maturity date. An explanation of the type of bond and other bond stipulations must be attached to the bond.

*Borrower.* The person that borrows, or seeks to borrow, money from the lender (including any party or parties liable for the guaranteed loan except guarantors) through a loan guaranteed under this program notice.

*Certificate of Incumbency and Signature.* An Agency-approved form used to validate authenticity of Agency representatives' signatures and titles.

*Collateral.* The asset(s) pledged by the borrower to the lender to secure the guaranteed loan.

*Commercially available.* A system that meets the requirements of either paragraph (1) or (2) of this definition.

(1) A domestic or foreign system that:

(i) Has both a proven and reliable operating history and proven performance data for at least one year specific to the use and operation to the proposed application;

(ii) Is based on established design and installation procedures and practices and is replicable;

(iii) Has professional service providers, trades, large construction equipment providers, and labor who are familiar with installation procedures and practices;

(iv) Has proprietary and balance of system equipment and spare parts that are readily available;

(v) Has service that is readily available to properly maintain and operate the system; and

(vi) Has an existing established warranty that is valid in the United States for major parts and labor; or

(2) A domestic or foreign system that has been certified by a recognized industry organization whose certification standards are acceptable to the Agency.

*Complete application.* An application that contains all parts necessary for the Agency to determine borrower and project eligibility, and the financial feasibility and technical merit of the project and contains sufficient information to determine a priority score for the application, if applicable, as determined by the Agency.

*Conditional Commitment.* An Agency-approved form in which the Agency agrees that, in accordance with applicable provisions of this notice and related forms, it will execute the loan note guarantee, subject to the conditions and requirements specified in applicable provisions of this notice and in the conditional commitment.

*Conflict of interest.* A situation in which a person has personal, professional, or financial interests that prevents, or appears to prevent the person from acting impartially. For purposes of this notice, conflict of interest also includes, but is not limited to:

(1) A person acting as a compensated agent of the borrower and the lender on the same guaranteed loan;

(2) Distribution or payment of guaranteed loan funds to an individual owner, partner, stockholder, or member of the borrower, or to a beneficiary or immediate family member of the borrower; or

(3) Refinancing debt that is owned by a loan packager, broker, or referral agent or its affiliates.

*Cooperative.* An entity that is legally chartered by the State or Tribe in which it operates as a cooperatively-operated business, or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

*Credit evaluation.* An analysis and evaluation by the lender of the credit factors associated with each application to ensure loan repayment using credit documentation procedures and an underwriting process that is consistent with industry standards and the lender's written policy and procedures.

*Debt Collection Improvement Act.* The Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 et seq.

*Debt service coverage ratio.* The ratio obtained when taking earnings before interest, taxes, depreciation, and amortization less reasonably expected replacement capital expenditures divided by the annual debt service (principal and interest payments) of the borrower.

*Default.* The condition that exists when a borrower is not in compliance with the promissory note, the loan agreement, or other documents relating to the loan. Default could be a monetary or non-monetary default.

*Delinquency/Delinquent loan.* A loan for which a scheduled loan payment is more than 30 days past due and cannot be cured within 30 days.



*Existing business.* A business that has been in operation for at least one full year and has achieved full operational capacity or stable operations in accordance with its executive summary, feasibility study, historical financial records, and financial projects, as determined by the Administrator. Mergers or changes in the business name or legal type of entity of a business that has been in operation for at least one full year are considered to be existing businesses as long as there is not a significant change in operations. Newly formed entities that are buying existing businesses will be considered an existing business as long as the business being bought remains in operation and there is no significant change in operations or expertise of management.

*Existing lender debt.* A debt owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

*Farmer or rancher cooperative.* An entity that is owned and controlled by agricultural producers and that is incorporated, or otherwise recognized by the State or Tribe in which it operates as a cooperatively-operated business or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

*Federal debt.* Debt owed to the Federal Government that is subject to collection under the Debt Collection Improvement Act.

*Final loss claim.* The Agency's payment of a final settlement amount with the lender after the collateral on a delinquent loan is liquidated or after settlement and compromise actions have been completed and as further set forth in 7 CFR 5001.521(e).

*Food.* For the purpose of this notice, food or food product for human consumption except alcoholic beverages, tobacco, and dietary supplements.

*Future recovery.* Funds collected by the lender after a final loss claim is processed.

*Guaranteed loan.* A loan made and serviced by a lender for which the Agency and lender have entered into a lender's agreement and for which the Agency has issued a loan note guarantee. Unless otherwise specified, guaranteed loan refers to a loan that the Agency has guaranteed under this notice.

*Guarantor.* A person who is legally obligated to make full payment to the Agency under an Agency-approved written agreement in the event that the borrower fails to meet its payment obligations on its guaranteed loan.

*Holder.* A person, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities.

*Immediate family.* Individuals who live in the same household or who are closely related by blood, marriage, or adoption, including a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

*Indian tribe.* Means the term as defined in 25 U.S.C. 5131.

*In-house expenses.* Expenses associated with activities that are routinely the responsibility of a lender's internal staff, including in-house lawyers, or its agents and that are normally incurred for administration of the loan. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

*Inspector.* A qualified consultant who has at least three years of experience and has completed at least five inspections on similar type projects.

*Intangible asset.* An asset that lacks physical substance. This includes, but is not limited to, copyrights, patents, capitalized franchise fees, goodwill, customer lists, software, organizational expenses, loan closing expenses, social media assets, and bond fees.

*Interest.* A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as a percentage of the principal amount

owed. The term interest does not include default or penalty interest or late payment fees or charges.

*Interest termination date.* The date on which no further interest will be payable by the Agency under the loan note guarantee.

*Interim financing.* A temporary or short-term loan made with the clear intent when the loan is made that it will be repaid through another loan that provides permanent financing. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after completion of project construction.

*Lender.* The eligible lender approved by the Agency to originate, service, and collect payments on loans guaranteed under this notice.

*Lender's agreement.* The Agency-approved form of contract between the Agency and the lender setting forth the lender's guaranteed loan responsibilities.

*Liquidation expenses.* Costs directly associated with the liquidation of collateral, including, without limitation, costs associated with preparing collateral for sale (e.g., repairs and transport), the sale (e.g., advertising, public notices, auctioneer expenses, and foreclosure fees), and conducting appraisals. Legal fees are considered liquidation expenses provided that the fees are reasonable as determined by the Agency and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house legal staff. Liquidation expenses do not include in-house expenses.

*Loan agreement.* The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender, including the terms of the borrower's repayment of the loan.

*Loan classification.* The process by which loans are examined and categorized by the probability of default and degree of potential loss in the event of default.

*Loan note guarantee.* The Agency-approved form containing the terms and conditions of the guarantee of an identified guaranteed loan.

*Loan packager.* A person, other than the applicant borrower or lender, that prepares a loan application package on behalf of the borrower or lender.

*Loan-to-discounted value.* The ratio of the dollar amount of a loan to the discounted dollar value of the collateral pledged as security for the loan.

*Material adverse change.* Any change in circumstance associated with a guaranteed loan, including without limitation, any change in the purpose of the loan, the borrower's financial condition or collateral, that, individually or in the aggregate, has jeopardized, or could be reasonably expected to jeopardize, the borrower's repayment of the guaranteed loan.

*Monetary default.* A failure to make a scheduled or required payment on a guaranteed loan.

*Multi-note system.* An option for the lender to provide one promissory note for the unguaranteed portion and a separate promissory note(s) for the guaranteed portion of the loan. All promissory notes must reflect the same payment terms.

*National Appeals Division (NAD).* A division of the United States Department of Agriculture as described in 7 CFR part 11.

*Negligent loan origination.* The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

*Negligent loan servicing.* The failure of a lender to perform those services or actions that a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes the

concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

*New business.* A startup or otherwise new business that has been in operation for less than one full year and a business that has been in operation for at least one full year and has not achieved full operational capacity or stable operations in accordance with its executive summary, feasibility study, historical financial records, and financial projects, as determined by the Administrator, including a new enterprise or new affiliate of an existing business moving or expanding into a new location involving new market or labor areas.

*Non-monetary default.* A situation where a borrower is not in compliance with the covenants or requirements of the loan documents or program requirements.

*Parity.* A lien position whereby two or more lenders or loans share a security interest of equal priority in collateral.

*Participation.* Sale of an interest in a loan by the lead lender to one or more participating lenders wherein the lead lender retains the note, collateral securing the note, and all responsibility for managing and servicing the loan. Participants are dependent upon the lead lender for protection of their interests in the loan. The relationship is typically formalized by a participation agreement. The participants and the borrower have no rights or obligations to one another.

*Passive investor.* An equity investor who does not actively participate in management and operation decisions of the borrower or any affiliate of the borrower as evidenced by a contractual agreement.

*Person.* An individual or entity organized under the laws of a State or an Indian Tribe.

*Program.* Program means the Food Supply Chain Guaranteed Loan Program authorized by the American Rescue Plan Act of 2021 and administered by the Agency.

*Promissory note.* The legal instrument evidencing debt executed by the borrower to a lender with stipulated repayment terms. The term promissory note includes bonds and other related debt instruments issued by the lender to a borrower.

*Protective advances.* Advances made by the lender for the purpose of preserving and protecting the collateral where the borrower has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances for property taxes, rent, hazard and flood insurance premiums, emergency repairs and annual assessments that protect the collateral. Legal and accounting fees are not protective advances.

*Public body.* A state, municipality, county, or other political subdivision of a State; a special purpose district; an Indian tribe on a Federal or State reservation or other federally-recognized Indian tribe; or an organization controlled by any of the above.

*Qualified consultant.* An independent third-party person possessing the knowledge, expertise, and experience to perform the specific task required.

*Socially disadvantaged group.* A group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

*Spreadsheet.* A table containing data from a series of financial statements of a business over a specified period. A financial statement analysis normally contains spreadsheets for balance sheet and income statement items and includes a cash flow analysis and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

*State.* Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

*Subordination.* An agreement among the lender, borrower, and Agency whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan.

*Transfer and assumption.* The Agency-approved conveyance by a borrower to an assuming borrower of the assets, collateral, and liabilities of the loan in return for the assuming borrower's binding promise to pay the outstanding debt.

*Veteran.* For the purposes of applicant selection, a veteran is a person who served in the active military, naval, or air service and was discharged or released therefrom under conditions other than dishonorable as defined in 38 U.S.C. 101(2).

*5. Accounting terms.* Accounting terms not otherwise defined in this part shall have the definition ascribed to them under Generally Accepted Accounting Principles (GAAP).

## **B. Federal Award Information**

*Type of Awards:* Guarantee

*Award Amounts:* The maximum, aggregate, loan amount that a borrower may receive is \$40 million. For fiscal year 2022, the Agency reserves not less than 19 percent of the funds made available to the Food Supply Chain Guaranteed Loan Program until **[INSERT DATE 180 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]** for entities that establish and facilitate the slaughter and initial processing of meat and poultry to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain.

*Due Date for Applications:* Applications will be accepted until funds are expended.

*Anticipated Award Date:* Beginning not earlier than **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

*Performance Period:* None

*Type of Assistance Instrument:* Loan note guarantee

*Loan guarantee limits:*

(a) *Loan amount.* The total amount of guaranteed loans under this notice to one borrower, including the aggregate amount of guaranteed loans to affiliate entities dependent upon another's operations and generation of revenue for loan repayment, (including the guaranteed and unguaranteed portions, and for subsequent loans the outstanding principal and interest balance of any existing FSC guaranteed loans, and the new loan request) must not exceed \$40 million.

(b) *Percentage of guarantee.* The percentage of guarantee will be 90 percent for loans with fixed interest rates on the guaranteed portion of the loan and for which the interest rate does not exceed the current Wall Street Journal prime rate plus 200 basis points. All other loans shall be guaranteed at 80 percent.

### **C. Eligibility Information**

(a) *Eligible borrowers.* Borrowers must meet all the following eligibility requirements. Applications which fail to meet any of these requirements will be deemed ineligible and will not be evaluated further.

(1) A borrower must be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other federally recognized tribal group; a public body; or an individual. In addition a borrower must be:

(i) A business engaged in or proposing to engage in aggregating, processing, manufacturing, storing, transporting, wholesaling, or distributing food; or

(ii) A business with existing or proposed contractual, lease, or service agreements with another entity or entities, including affiliated entities, which are engaged or



proposing to engage in aggregating, processing, manufacturing, storing, transporting, wholesaling, or distributing food.

(2) A borrower must be a business engaged or proposing to engage in commercial food product project (s) either directly or through contractual, lease or service agreements with another entity or entities including affiliated entities. A commercial food product is a product in regular production that is routinely sold in significant quantities to the general public or industry.

(3) Borrowers engaged or proposing to engage in processing of meat, poultry, processed egg products, and Siluriformes either directly or through contractual, lease or service agreements with another entity or entities including affiliated entities, must comply with the requirements of the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service. Borrowers engaged or proposing to engage in processing of other foods and food ingredients either directly or through contractual, lease or service agreements with another entity or entities including affiliated entities, must comply with the requirements of the Food and Drug Administration. All borrowers must comply with requirements of state, tribal and local governments.

(4) Borrowers, including affiliates of the borrower engaged or proposing to engage in, either directly or through contractual, lease or service agreements with another entity or entities including affiliated entities, beef, pork, chicken, or turkey processing must not hold a market share greater than or equal to the entity that holds the fourth largest share of that market for the species addressed in the application

(5) Individual borrowers must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. For purposes of this subpart, citizens and residents of the Republic of Palau, the Federated States of Micronesia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands are considered U.S. citizens. Individuals

that reside in the United States after being legally admitted for permanent residence must provide a permanent green card as evidence of eligibility.

(6) All applications for assistance will be accepted and processed without regard to the availability of credit from any other source.

(b) *Eligible uses of funds.* Borrowers must demonstrate, to the Agency's satisfaction, that loan funds will remain in the United States and the facility being financed and the uses of the loan funds will support the start-up or expansion of activities in the middle of the food supply chain, particularly the aggregation, processing, manufacturing, storage, transportation, wholesaling, or distribution of food, to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain.

Eligible uses of funds include, but are not limited to, the following:

(1) Purchase and development of land, buildings, or infrastructure for public or private commercial enterprises or industrial properties, including expansion or modernization.

(2) Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair the use or value of the property as security for the loan. The term of the lease must be equal to or greater than the term of the loan.

(3) Constructing or equipping facilities for lease to public or private enterprises engaged in commercial or industrial operations. Financing for mixed-use properties, involving both commercial business and residential space, is authorized provided that at least 50 percent of the building's projected revenue will be generated from food supply chain related business uses.

(4) Purchase of machinery and equipment including but not limited to manufacturing systems, information technology systems, and commercially available new technologies that promote worker safety or food safety.

(5) Debt refinancing when it is determined that the project is viable and refinancing is necessary to improve cash flow or obtain appropriate lien positions. Debt being refinanced must be debt of the borrower reflected on its balance sheet. The lender's analysis must document that, except for the refinancing of lines of credit, the debt being refinanced was for an eligible loan purpose under this subpart. Existing lender debt may be included provided that, at the time of application, the loan being refinanced has been active and current for at least the past 12 months (current status cannot be achieved by the lender forgiving the borrower's debt or servicing actions that impact the borrower's repayment schedule), and the lender is providing better rates or terms. Unless the amount to be refinanced is owed directly to the Federal government or is federally guaranteed, no more than 50 percent of loan funds may be used to refinance existing debt.

(6) Takeout of interim financing. Guaranteeing a loan that provides for permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a request for preliminary eligibility review or application that proposes such interim financing prior to closing the interim loan. The borrower must take no action that would have an adverse impact on the environment or limit the range of alternatives to be considered by the Agency during the environmental review process. The Agency will not guarantee takeout of interim financing loans that prevent a meaningful environmental assessment prior to Agency loan approval. Even for projects with interim financing, the Agency cannot approve the loan and issue a Conditional Commitment until the environmental process is complete. The Agency assumes no responsibility or obligation for interim loans.

(7) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided such purchase is required for all their borrowers and is the minimum amount required.

(8) The purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative, the purchase of transferable cooperative stock, the purchase of stock in a business by employees forming an Employee Stock Ownership Plan or worker cooperative, and loans to a fund that invests primarily in cooperatives in accordance with the provisions of this notice.

(9) Taxable corporate bonds when the bonds will be fully amortized over the life of the bond and comply with all provisions of (i) through (v) below:

(i) The bond holder (lender) retains 7.5 percent of the bond.

(ii) The bonds must be fully secured with collateral.

(iii) The bonds must only provide for a trustee when the trustee is totally under the control of the lender. The bonds must provide no rights to bond holders other than the right to receive the payments due under the bond. For instance, the bonds must not provide for bond holders replacing the trustee or directing the trustee to take servicing actions, such as accelerating the bonds. Convertible bonds are not eligible under this paragraph due to the potential conflict of interest of a lender having an ownership interest in the borrower.

(iv) The bond issuer (borrower) must obtain the services and opinion of an experienced bond counsel who must present a legal opinion stating that the bonds are legal, valid, and binding obligations of the issuer and that the issuer has adhered to all applicable laws.

(v) The bond holder (lender) must purchase all the bonds and comply with all Agency regulations. There must be a bond purchase agreement between the issuer and the bond holder. The bond purchase agreement must contain similar language to what is required to be in a loan agreement in accordance with this notice and must be in form and substance satisfactory to the Agency. The bond holder is responsible for all servicing of

the loan (bond), although the bond holder may contract for servicing assistance, including contracting with a trustee who remains under the lender's total control.

(10) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(11) Fees and charges outlined in the Loan Guarantee Limits section, above.

(12) Feasibility studies.

(13) Educational, innovation, and training facilities and equipment and kitchen, business, and other multi-tenant incubator facilities and equipment when not eligible for Rural Housing Service, Community Facilities assistance.

(14) Pollution control and abatement as related to transportation, waste management and other activities related to otherwise eligible projects.

(15) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan.

(c) *Ineligible entities.*

(1) An entity is ineligible if any of the conditions identified in paragraphs (i) through (iv) below apply to the borrower, any owner with more than 20 percent ownership interest in the borrower (does not include passive investors), or any owner with control of the borrower.

(i) There is an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court).

(ii) There is any delinquency on payment of Federal income taxes.

(iii) There is any delinquency on a Federal Debt.

(iv) There is a debarment or suspension from receiving Federal assistance.

(2) An entity is ineligible if it derives more than 15 percent of its annual gross revenue (including any lease income from space or machines) from gambling activity,

excluding State-authorized lottery proceeds or Tribal-authorized gaming proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

(3) An entity is ineligible if it derives income from activities of a prurient sexual nature.

(4) An entity is ineligible if it derives income from illegal drugs, drug paraphernalia, or any other illegal product or activity as defined under Federal statute. A borrower that intends to lease space or enter into a power purchase agreement with a marijuana dispensary is not eligible since the borrower would be receiving income from the marijuana operation which is a violation of federal laws since marijuana is a controlled substance under federal law and subject to federal prosecution under the Controlled Substances Act (21 USC 801).

(5) An entity is ineligible if it is a charitable or fraternal organization. For purposes of this section, an organization that derives more than 10 percent of its annual gross revenue from tax deductible charitable donations, based on historical financial statements, is considered a charitable organization. Fees for services rendered or that are otherwise ineligible for deduction under the Internal Revenue Code are not considered tax deductible charitable donations.

(6) An entity is ineligible if its lender or any of the lender's officers have an ownership interest in the borrower or is an officer or director of the borrower with management control or where the borrower or any of its officers, directors, stockholders, or other owners have more than a five percent ownership interest in the lender. Any of the lender's directors, stockholders, or other owners that are officers, directors, stockholders, or other owners of the borrower without management control or ownership less than five percent must be recused from any decision-making process associated with the guaranteed loan.

(7) An entity is ineligible if it is a lending institution, investment institution, or insurance company with exception of a fund that invests primarily in cooperatives and funds utilized in New Markets Tax Credit (NMTC) structures.

*(d) Ineligible use of loan funds and ineligible loan purposes include:*

(1) Distribution or payment to an individual or entity that will retain an ownership interest in the borrower or distribution or payment to a beneficiary of the borrower.

Distribution or payment to a member of the immediate family of an owner, partner, or stockholder will not be permitted, except for a change in ownership of the business where the selling immediate family member does not retain an ownership interest and the Agency determines the price paid to be reasonable. As this type of transaction is not an arm's length transaction, reasonableness of the price paid will be based upon an appraisal. In situations where there is common ownership or an otherwise closely related company is being paid to do construction or installation work for a borrower, only documented costs associated with construction or installation can be paid with loan proceeds. Documented construction or installation costs may not include any profit or wages to a related person, and all work must be done at cost with no profit built into the cost. This paragraph does not apply to transfers of ownership for Employee Stock Ownership Plans (ESOPs) or worker cooperatives; cooperatives where the cooperative pays the member for product or services; or where member stock is transferred among members of the cooperative.

(2) Guaranteeing lease payments or any lines of credit.

(3) Guaranteeing loans made by other Federal agencies.

(4) Loans on which the interest is excludable from income under current or a successor statute of the Internal Revenue Code. Funds generated through the issuance of tax-exempt obligations shall neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor shall an Agency guaranteed loan serve as collateral for a tax-

exempt issue. The Agency may guarantee a loan for a project that involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part that is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(5) Guarantees supporting inherently religious activities, such as worship, religious instruction, proselytization, or to pay costs associated with acquisition, construction, or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted.

(6) Research and development projects and projects that involve technology that is not commercially available.

(7) Other than cooperative stock purchase loans and cooperative equity security guarantees, guarantees supporting speculation, arbitrage, or speculative real estate investment.

(8) Any business located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 et seq.

(9) Any business located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(10) Any project that drains, dredges, fills, levels, or otherwise manipulates a wetland or engages in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands. This does not apply to loans for utility lines.



(11) Facilities exempt from Federal inspection in accordance with 9 CFR 303.1(a), specifically Federal Meat Inspection Act custom-exempt facilities. However, these facilities could apply as a new or expanded business seeking to expand their operations to obtain a Federal or equivalent seal of inspection.

(12) Any project involving alcoholic beverages, tobacco, or dietary supplements.

(13) Projects or uses of loan funds that the Agency determines create, directly or indirectly, a conflict of interest.

(e) *Fees and Charges.*

(1) *Routine lender fees.* The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business, and these fees are an eligible use of loan proceeds. The lender must document such routine fees on an Agency approved application form. The lender may charge prepayment penalties and late payment fees that are stipulated in the loan documents, as long as they are reasonable and customary; however, the loan note guarantee will not cover either prepayment penalties or late payment fees.

(2) *Professional services.* Professional services are those rendered by persons generally licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by loan packagers. The borrower may pay fees for professional services needed for planning and developing a project. Such fees are an eligible use of loan proceeds provided that the Agency agrees that the amounts are reasonable and customary. The lender must document these fees on the Agency approved application form.

(f) *Interest rates.*

(1) The interest rate for the guaranteed loan will be negotiated between the lender and the borrower and may be either fixed or variable, or a combination thereof, as long as

it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers for loans without guarantees and are subject to Agency review and approval.

(2) A variable interest rate must be a rate that is tied to a published base rate, published in a national or regional financial publication, agreed to by the lender and the Agency. The variable interest rate must be specified in the promissory note and may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly. The lender must incorporate, within the variable rate promissory note at loan closing, the provision for adjustment of payment installments. The lender must fully amortize the outstanding principal balance within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(3) It is permissible to have different interest rates on the guaranteed and unguaranteed portions of the loan.

(4) Any change in the base rate or fixed interest rate between issuance of the conditional commitment and loan closing must be approved in writing by the Agency. Approval of such change must be shown as an amendment to the conditional commitment in accordance with this notice and must be reflected on the Guaranteed Loan Closing Report.

(5) The lender's promissory note must not contain provisions for default or penalty interest nor will default or penalty interest, interest on interest, or late payment fees or charges be paid under the Loan Note Guarantee.

(g) *Loan terms.*

(1) *Term length.* The lender, with Agency concurrence, will establish and justify the guaranteed loan term based on the use of guaranteed loan funds, the useful economic life of the assets being financed and those used as collateral, and the borrower's repayment ability. The maximum term allowable for final guaranteed loan maturity is limited to the justified useful life of the project or assets used as collateral but may not

exceed 40 years or limitations in the applicable State statute, whichever is less. State statutory limits on maximum terms do not apply for projects on land under the jurisdiction of federally recognized Tribes.

(2) *Guaranteed loan schedule and repayment.* The lender must structure repayment in consideration of the borrower's cash flow and in accordance with the provisions of this section and the loan agreement. Scheduled guaranteed loan payments shall be made no less frequently than annually. In addition:

(i) Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term.

(ii) Guaranteed loans must require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment.

(3) *Interest only.* If the promissory note provides for an interest-only period, interest must be paid at least annually starting on a date that is no more than one year from the date of the promissory note. The first payment of principal and interest will be scheduled based on the borrower's cash flow and whether the facility is operational and generating adequate income. However, the first principal and interest payment must be scheduled not more than three years after the date of the promissory note and principal and interest payments must be scheduled for repayment at least annually thereafter.

(4) *Due on demand.* There must be no "due-on-demand" clauses without cause. Regardless of any "due-on-demand" with cause provision in a lender's promissory note, the Agency must concur in any acceleration of the guaranteed loan unless the basis for acceleration is monetary default.

(h) *Capital and equity.* Borrowers are required to have sufficient capital or equity to mitigate the ongoing financial and operational risks of the business. Balance sheet equity will be determined based upon current and projected borrower financial statements. Current and projected financial statements filed with the application are

reviewed to determine if it is likely that the balance sheet equity requirement can be met. The following capital and equity requirements must be met at the time of lender's closing of the guaranteed loan. A balance sheet as of loan closing is required and should reflect the new debt and use of proceeds. If there are multiple borrowers, consolidated financial statements should be submitted.

(1) Existing businesses must meet one of the following requirements:

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1, at loan closing;

(ii) Provide 10 percent or more of total eligible project costs in the form of borrower investment of equity or other funds into the project including grants or subordinated debt when subject to a standstill agreement for the life of the loan; or

(iii) Balance sheet equity includes owner-contributed capital of 10 percent or more of total fixed assets (net total fixed assets plus depreciation).

(2) New businesses with sales contract(s) with proceeds in an amount adequate to meet debt service and the term of the sales contract(s) are at least equal to the term of the guaranteed loan, and subject to Agency acceptance of the credit worthiness of the counterparty (entity the borrower is contracting with), the borrower must meet one of the following requirements:

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1 at loan closing; or

(ii) Borrower investment of equity or other funds (including grants or subordinated debt when subject to a standstill agreement for the life of the loan) into the project in an amount of 10 percent or more of total eligible project cost.

(3) New businesses with a project involving construction and when the lender will request the loan note guarantee prior to completion of construction must meet one of the following requirements:

(i) A minimum of 25 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 3 to 1, at guaranteed loan closing; or

(ii) Borrower investment of equity or other funds (including grants or subordinated debt when subject to a standstill agreement for the life of the loan) into the project in an amount of 25 percent or more of total eligible project cost.

(4) All other borrowers that are new businesses must meet one of the following requirements:

(i) A minimum of 20 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 4 to 1, at guaranteed loan closing; or

(ii) Borrower investment of equity or other funds (including grants or subordinated debt when subject to a standstill agreement for the life of the loan) into the project in an amount of 25 percent or more of total eligible project cost.

(5) Capital and equity requirements may be increased or reduced by the Agency as follows:

(i) Increases.

(A) The Agency may increase the capital or equity requirement specified under paragraphs (h)(1) through (4) of this section for guaranteed loans the Agency determines carry a higher risk. In determining whether a project or guaranteed loan carries a higher risk, the Agency will consider the current status of the industry, concentration of the industry in the Agency's portfolio, collateral coverage, value of personal or corporate guarantees, cash flow, and contractual relationships with suppliers and buyers; credit

rating of the borrower; and the strength of the feasibility study and experience of management. The Agency may also increase the capital or equity requirement for new businesses producing new products to sell into new and emerging markets.

(B) The Agency will increase the capital or equity requirement specified under paragraphs (h)(1) through (4) of this section for all guaranteed loans in excess of \$25 million.

(ii) Reductions. The Agency may reduce the minimum equity requirement for an existing business when personal or corporate guarantees are obtained in form and substance satisfactory to the Agency, and all pro forma statements indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt service coverage ratio.

(6) The lender must certify that, as of the date the guaranteed loan was closed, its credit analysis indicated that the borrower had sufficient capital or equity to mitigate the financial and operational risks of the business, and that the borrower met the minimum equity required by the Agency in its conditional commitment, or that the minimum borrower capital contribution toward project costs, as applicable and required by the Agency, was met. A copy of the borrower's loan closing balance sheet must be included with the lender's certification.

#### **Capital Equity Requirements Summary**

	<b>Borrower must meet one of the following at the time of the closing of the guaranteed loan:</b>		
<b>Borrower</b>	<b>Percent balance sheet equity:</b>	<b>Borrower investment as percent of total eligible project cost:</b>	<b>Balance sheet equity includes owner contributed capital as percentage of total fixed assets:</b>
Existing Business	≥10%	≥10%	≥10%
Borrowers that are new businesses			

with sales contract(s) adequate to meet debt service and the term of the sales contract(s) are at least equal to the term of the guaranteed loan.	$\geq 10\%$	$\geq 10\%$	N/A
Borrowers that are new businesses for a project involving construction and the lender will request the loan note guarantee prior to completion of construction.	$\geq 25\%$	$\geq 25\%$	N/A
All other borrowers that are new businesses	$\geq 20\%$	$\geq 25\%$	N/A

(i) *Personal, partnership, and corporate guarantees.* The provisions of this section do not apply to passive investors.

(1) Except as provided in paragraph (3) of this section, Agency-approved, unsecured personal, partnership, and corporate guarantees for the full term of the guaranteed loan and at least equal to the guarantor's percent interest or membership in the borrower times the guaranteed loan amount are required from any person or entity owning a 20-percent or greater interest or membership in the borrower. In the event a portion of the borrower's ownership interest stock is sold or transferred, the Agency reserves the right to require personal or corporate guarantees from the new owners of a 20-percent or more interest in the borrower.

(2) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

- (i) Guarantees to be secured;
- (ii) Guarantees from any person or entity owning less than a 20 percent interest or membership in the borrower; and

(iii) Guarantees from persons whose ownership interest in the borrower is held indirectly through intermediate or affiliated entities.

(3) Exceptions to the requirement for personal, partnership or corporate guarantees may be requested by the lender. The lender must document, to the Agency's satisfaction, that collateral, equity, cash flow, and profitability indicate an above-average ability of the borrower to repay the loan. The Agency will evaluate these requests on a case-by-case basis.

(4) Each guarantor must execute an Agency-approved guarantee form in addition to any guarantee form required by the lender.

(5) Any amounts paid by the Agency pursuant to a claim by a guaranteed program lender will constitute a Federal debt owed to the Agency by a guarantor of the loan, to the extent of the amount of the guarantor's guarantee.

(j) *Insurance.* The lender is responsible for ensuring that the following required insurance is maintained by the borrower.

(1) *Hazard.* Hazard insurance with a standard clause naming the lender as mortgagee or loss payee, as applicable, is required for the life of the guaranteed loan. The amount must be at least equal to the replacement value of the collateral or the outstanding balance of the loan, whichever is the greater amount.

(2) *Life.* The lender may require a collateral assignment of life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage must be in amounts necessary to provide for management succession or to protect the business. The Agency may require life insurance on key individuals for loans where the lender has not otherwise proposed such coverage. The cost of insurance and its effect on the applicant's working capital must be considered, as well as the amount of existing insurance that could be assigned without requiring additional expense.



(3) *Worker compensation.* Worker compensation insurance is required in accordance with State or Tribal law.

(4) *Flood.* National flood insurance is required in accordance with applicable law.

(5) *Other.* The lender must consider whether public liability, business interruption, malpractice, and other insurance is appropriate to the borrower's particular business and circumstances and must require the borrower to obtain such insurance as is necessary to protect the interests of the borrower, the lender, and the Agency.

(k) *Financial statements.*

Except for audited financial statements, the lender will determine the type and frequency of submission of financial statements by the borrower and any guarantors. All financial information (e.g., financial statements, balance sheets, financial projections, and income statements) must be prepared and submitted in accordance with accounting practices acceptable to the Agency. Such practices can include, but are not limited to, GAAP and the industry's standard accounting practice. The Agency may require annual audited financial statements. Audits will be required of any public body, nonprofit corporation, or Indian Tribe that receives a guaranteed loan that meets the thresholds established by 2 CFR part 200, subpart F. Any audit provided by a public body, nonprofit corporation, or Indian Tribe required by this paragraph will be considered adequate to meet the audit requirements of the FSC program for that year.

(l) *Cooperative stock/cooperative equity.* The cooperative or business entity assisted must be an eligible borrower under this notice and the funds must be used for eligible uses of loan funds under this notice.

(1) *Cooperative stock purchase program.*

(i) The Agency may guarantee loans for the purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity. The cooperative must use the proceeds

from the stock sale for eligible uses of loan funds described in Eligible Uses of Funds section, above. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative. The full amount of the loan proceeds must be used for the purchase of cooperative stock and cooperative must not reinvest those funds into another entity. The Agency may also guarantee loans for the purchase of transferable stock shares of any type of cooperative. Such stock may provide delivery or some form of participation rights and may only be traded among cooperative members.

(ii) The maximum term allowable for a guaranteed loan's maturity is limited to the justified useful life of the funded project assets the cooperative purchases with the proceeds of the stock sale not to exceed 40 years or applicable State statutory limitations, whichever is less. The maximum term is seven years if the proceeds from the stock sale are used by the cooperative for working capital.

(iii) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default.

(iv) The lender must complete a written credit analysis of the borrower of each stock purchase loan and a complete credit analysis of the cooperative prior to making its first stock purchase loan.

(v) If the borrower is an agricultural producer, the borrower may provide financial information in the manner that is generally required by commercial agricultural lenders.

(vi) The required feasibility study should address the cooperative.

(vii) The Agency will conduct an appropriate environmental assessment on the processing facility and will not process individual applications for the purchase of stock

until the environmental assessment on the cooperative processing facility is completed. Typically, an individual loan for the purchase of cooperative stock is considered a categorical exclusion.

*(2) Cooperative equity security guarantees.*

(i) The Agency may guarantee loans for the purchase of preferred stock or similar equity issued by a cooperative and may guarantee loans to a fund that invests primarily in cooperatives. In either case, the guarantee must significantly benefit one or more entities eligible for assistance under this notice.

(ii) "Similar equity" is any special class of equity stock that is available for purchase by non-members and/or members and lacks voting and other governance rights.

(iii) A fund that invests "primarily" in cooperatives is determined by its percentage share of investments in and loans to cooperatives. A fund portfolio must have or commit at least 50 percent of its loans and investments in cooperatives to be considered eligible for loan guarantees for the purchase of preferred stock or similar equity.

(iv) The maximum term of a guaranteed loan for preferred stock or similar equity is equal to the least of the following, but will not exceed 40 years:

(A) The justified useful life of the funded project assets;

(B) The maximum term under any applicable State statute;

(C) The specified holding period for redemption as stated by the stock offering;

or,

(D) Seven years when the proceeds are used by the cooperative for working capital.

(v) All borrowers purchasing preferred stock or similar equity must provide documentation of the terms of the offering that includes compliance with State and

Federal securities laws and financial information about the issuer of the preferred stock to both the lender and the Agency.

(vi) An issuer of preferred stock must be a cooperative organization or a fund and must be able to issue preferred stock to the public that, complies with applicable State and Federal securities laws.

(vii) A fund must use a guaranteed loan under this subpart to, either or both, make loans to cooperatives or to purchase preferred stock that is issued by cooperatives. The cooperative must use the proceeds from the guaranteed loan or stock sale for eligible uses of loan funds described in the Eligible Uses of Funds section, above.

(viii) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default. When recovering losses from loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from reinvestment of dividends.

(ix) Shares of preferred stock that are purchased with guaranteed loan proceeds cannot be converted to common or voting stock.

(x) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a borrower defaults on a loan financed under the guaranteed loan program, the borrower waives any ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

(xi) Guaranteed loans for the purchase of preferred stock must be prepaid in the event a cooperative or fund that issued the stock exercises an early redemption. If the

cooperative enters into bankruptcy, to the extent the cooperative can redeem the preferred stock, the borrower is required to repay the loan from the redemption of the stock.

*(3) Employee ownership succession.*

(i) The Agency may guarantee loans for conversions of businesses to either cooperatives or ESOP within five years from the date of initial transfer of stock.

(ii) The term of the loan shall not exceed 10 years.

(iii) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, the ability to transfer the stock to another party, or the ability to otherwise liquidate and dispose of the collateral in the event of a borrower default. In the event of default, the stock may not be sufficient to satisfy the debt and the borrower is fully liable for the entire debt, regardless of the success or failure of the cooperative or ESOP. The lender must take all action to maximize recovery on the loan, including collection of personal and corporate guarantees. In addition, provisions of the Debt Collection Improvement Act of 1996 may impose significant restrictions on delinquent Federal debtors, including eligibility for other Federal programs.

(iv) The lender must complete a written credit analysis of each stock purchase loan and a complete credit analysis of the cooperative or ESOP prior to making its first stock purchase loan.

(v) If a cooperative is organized, a selling owner becomes a member with special control rights to protect their stake in the business while a succession plan is implemented. At the completion of the stock transfer, selling owners may retain their membership in the cooperative provided that their control rights are the same as all other members. Any special covenants that selling owners may have held must be extinguished upon completion of the transfer.

(vi) If an ESOP is organized for transferring ownership to employees, selling owner(s) may not retain ownership in the business after five years from the date of the initial transfer of stock.

(m) *New Markets Tax Credit (NMTC) program.* The NMTC program is administered by the U.S. Department of the Treasury's (Treasury) Community Development Financial Institutions (CDFI) Fund with NMTC credits allocated to Treasury-certified Community Development Entities (CDEs) across the United States to make Qualified Equity Investments (QEIs) in low-income communities. NMTC related definitions and terms in this section are governed by section 45(D) of the Internal Revenue Code (26 U.S.C. 45D), and applicable Treasury regulations (26 CFR 1.45D-1). A CDE will generally establish a new subsidiary of a CDE (sub-CDE) for individual NMTC projects. Lenders and their borrowers with guaranteed loan projects that include NMTC investments must comply with the provisions in this section. To be a lender for a guaranteed loan project that involves financing under the NMTC provisions, the lending entity must meet the applicable eligibility criteria in § 5001.130. The Agency will not waive its servicing rights to a guaranteed loan or be a party to any forbearance agreement in conjunction with a NMTC project.

(1) *Guaranteed loans directly to Qualified Active Low-Income Community Businesses (QALICB).*

(i) A lender that is CDE or sub-CDE under the direct control of a regulated lender or an approved non-regulated lender does not need to separately meet the requirements of an eligible lender under this notice to make a guaranteed loan directly to a QALICB.

(ii) Subject to the provisions in Section C.(m)(1)(iii) of this notice, a lender that is a CDE or sub-CDE may have an ownership interest in the borrower provided that each condition specified in paragraphs (A) through (C) below is met.

(A) The lender does not have an ownership interest in the borrower prior to the application.

(B) The lender does not take a controlling interest in the borrower.

(C) The lender does not provide equity or take an ownership interest in a borrower at a level that would result in the lender owning 20 percent or more interest in the borrower.

(iii) Notwithstanding the provisions in Section C.(d)(13) of this notice a lender that is a CDE or sub-CDE taking an ownership interest in the borrower does not constitute a conflict of interest. The Agency will mitigate the potential for a conflict of interest by requiring appropriate loan covenants establishing, at a minimum, limitations on dividends and distributions of earnings in the loan agreement between the lender and borrower. The Agency will also ensure that the lender limits any waivers of loan covenants and future modifications of loan documents in compliance with this part.

(iv) Guaranteed loans made by a lender directly to a QALICB must meet all other program and project eligibility requirements as specified in this notice.

(v) For purposes of calculating borrower equity, the CDE's (or sub-CDE's) amount of the principal balance of the loan from NMTC investor funds that is subordinated to the guaranteed loan may be considered as equity.

(2) *Guaranteed loans to a NMTC leveraged equity structure.* Tax benefits to a NMTC investor are based on the total amount of funds utilized in the project. The tax benefit calculation includes the sum of the investor's cash investment plus loan proceeds from a leveraged lender into a NMTC investor fund entity. The investor fund entity is generally a new entity established to make a QEI into one or more CDEs or sub-CDEs to support a qualified low-income community investment (QLICI) to a QALICB. The investor fund entity, through its investment, has ownership rights in the sub-CDE that will be making secured QLICI loans to the QALICB. Notwithstanding the provisions

above in section C.(a), Eligible Borrowers, either a leveraged lender entity lending to an investor fund entity, or an investor fund entity such as an investor partnership or investor limited liability corporation, may be an eligible borrower for a specific NMTC project as specified in paragraph (2)(i) of this section. For purposes of this section only, the stated term “borrower” in paragraphs (2)(i) through (xiii) of this section applies to both a leveraged lender entity and an investor fund entity as the guaranteed loan borrower in the NMTC project. Paragraphs (2)(ii) through (xiii) of this section identify modifications to this part that apply when the eligible borrower is a leveraged lender entity or investor fund entity in a NMTC project.

(i) To be an eligible borrower using the leveraged equity structure of a NMTC project each condition identified in paragraphs (2)(i)(A) through (E) of this section must be met.

(A) The investor fund entity must be established for a single specific NMTC investment.

(B) The lender is not an affiliate of the borrower.

(C) When the borrower is a leveraged lender entity it must relend one hundred percent of the guaranteed loan funds to an investor fund entity. In all cases, one hundred percent of the guaranteed loan funds are or will be invested by the investment fund entity in one or more sub-CDEs that will then be loaned directly to a QALICB through a direct tracing method, and such guaranteed loan funds are, or will be, used by the QALICB in accordance with the eligibility requirements in this Notice. The QALICB's project must be the ultimate use of one hundred percent of the guaranteed loan funds.

(D) The QALICB must meet the requirements of an eligible borrower under this notice.

(E) The sub-CDE operating agreement with the QALICB must include a provision that the guaranteed lender has approval rights with respect to any substantial



loan servicing actions that may be taken by the sub-CDE regarding the collateral or repayment terms of their QLICI loans to the QALICB.

(ii) The guaranteed loan amount and percentage of guarantee provisions found in the Loan Guarantee Limits section of this notice, apply to the QALICB and to the investor fund entity or leveraged lender entity, who would actually be the borrower as defined under this part.

(iii) For purposes of calculating borrower equity in compliance with this notice, the leveraged lender entity's note from the investor fund may be considered a tangible asset and when the lien associated with the sub-CDE's loan is subordinated, the principal balance of the sub-CDE's loan made to the QALICB from NMTC investor funds may be considered as equity.

(iv) The loan terms of this notice apply to both the borrower and the QALICB. The maturity and related payment schedule of the lender's guaranteed loan to the borrower must be no longer than the maturity and related payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments can be used for a NMTC loan. The lender may require additional principal repayment by a co-borrower, such as an owner or principal participant of the QALICB. Notwithstanding the provisions in Section C.(g)(3), the Agency may consider interest-only payments by a borrower pursuant to an interest-only term not to exceed seven years on a loan made under an NMTC structure if the lender requires:

(A) A debt repayment reserve fund or sinking fund in an amount at least equal to the guaranteed loan's principal amortization that would have otherwise applied to the loan if equally amortized payments were collected during the seven-year term; and

(B) Such reserve funds or sinking funds are applied to the guaranteed loan as an additional payment of principal at the end of such interest-only term.

(v) The credit factors of this notice apply to both the lender's guaranteed loan to the borrower and the sub-CDE's loan to the QALICB. The collateral provisions of this notice apply only to the sub-CDE's loan to the QALICB.

(vi) The personal, partnership and corporate guarantee provisions of this notice apply when the guaranteed loan borrower is a leveraged lender entity in an NMTC project. Guaranteed loans made directly to an investor fund entity as the borrower do not require a personal, partnership, or corporate guarantee from the investor fund entity's owner, who is the NMTC tax credit investor and considered a passive investor. The Agency shall obtain the personal, partnership or corporate guarantee from the QALICB ownership for a guaranteed loan to an investor fund entity, subject to the eligibility requirements of the NMTC program. The Agency may require additional personal, partnership or corporate guarantees if warranted by an Agency evaluation of potential financial risk.

(vii) The insurance provisions of this notice apply only to the QALICB and the sub-CDE's secured loan to the QALICB.

(viii) The financial reporting provisions of this notice apply to both the borrower and the QALICB.

(ix) The application requirements of this notice, as applicable, apply to both the borrower and the QALICB, including the application analysis and evaluation components. The Agency also requires submission of the loan terms and documents between the sub-CDE and QALICB. As part of the application completed by the lender, the documentation must include comparable industry information and a summary of the NMTC project's funding path and an explanation of the relationships between all parties in the NMTC transaction (an accompanying schematic is encouraged for complicated transactions).

(x) The environmental responsibilities specified in this notice apply to the NMTC project.

(xi) For any application that the Agency assigns a priority score, when assigning the priority score to a NMTC loan application, the Agency will score the project based on the entire NMTC structure and the QALICB's project as the ultimate use of guaranteed loan funds.

(xii) The lender is responsible for ensuring that the NMTC project complies with the planning, performing, development and project monitoring provisions of this notice and the lender is also responsible for ensuring the NMTC project complies with all applicable Treasury NMTC requirements.

(xiii) The interest rate and loan term provisions of this notice apply to both the borrower and the QALICB in a NMTC transaction.

#### **D. Application and Submission Information**

(a) *Address to Request Application Package.*

(1) Lenders should download the application documents and requirements delineated in this notice from: <https://www.rd.usda.gov/foodsupplychainloans>.

(2) Applications will only be accepted electronically as provided at <https://www.rd.usda.gov/foodsupplychainloans>. Lenders may use an existing Unique Entity Identifier (UEI) (obtained at <https://sam.gov/>) and eAuthentication Customer Account to file an application. To apply electronically:

(i) Obtain and register for a UEI at <https://sam.gov/> as described in Section H.(e)(2) of this notice;

(ii) Create a Level 2 USDA eAuthentication Customer Account at <https://www.eauth.usda.gov/eauth/b/usda/home>; and,

(iii) Request access to apply electronically by emailing a written request with a complete Account and User Creation form (available at <https://www.rd.usda.gov/foodsupplychainloans>) to [rdfoodsupplychainloans@usda.gov](mailto:rdfoodsupplychainloans@usda.gov).

(3) An autoreply e-mail message will acknowledge receipt of your request. Please allow at least two business days for its processing. If you do not receive an e-mail message within that timeframe, please check your Spam folder;

(4) Upon approval, a lender's authorized/rightful users will each receive an email from [RD.AdminAppsSupport@usda.gov](mailto:RD.AdminAppsSupport@usda.gov), with instructions to access the system.

*(b) Content and Form of Application Submission.*

The lender may complete either a request for preliminary eligibility review or a full application to begin the process for obtaining a guaranteed loan. The Agency encourages, but does not require, lenders to file requests for preliminary eligibility reviews in order to obtain Agency comments before submitting a full application.

*(1) Preliminary eligibility review.*

(i) *Contents.* Except as otherwise indicated, each request for a preliminary eligibility review must contain the material identified in paragraphs (A) and (B) of this section. This information may be submitted in a narrative format or utilizing the lender's preliminary lender's analysis or preliminary credit memo. The borrower's executive summary and feasibility study should be included for a full application under this notice.

The lender will initiate the environmental review process early in the planning stage and should be alert for projects that may have a significant impact on the environment.

(A) Regardless of format, the lenders must provide the following information:

(1) Name of the proposed borrower and co-borrower(s) as applicable, organization type, address, contact person, email address, and telephone number and

whether the proposed borrower or co-borrower is a member of a socially disadvantaged group;

(2) Name of the proposed lender, address, telephone number, contact person, email address;

(3) Amount of the guaranteed loan request, the percentage of guarantee requested (if known), the proposed rates and terms of the guaranteed loan, and the source(s) of other funding;

(4) If known, a description of collateral to be offered with estimated value(s), identity of guarantors, and the amount and source of equity, other capital, and matching funds to be contributed to the project; and

(5) A brief description of the project, its location, products, or services provided, service area, and, as applicable, availability of raw materials and supplies, including an explanation of the impact the project will have on increasing capacity and helping create a more resilient, diverse, and secure U.S. food supply chain.

(B) Sufficient information and documentation to enable the Agency to assess borrower, lender, and project eligibility, including summaries or spreadsheets of financial statements or audits, relationships and identity of any affiliates; copies of organizational documents and organizational charts; and existing debt instruments.

(ii) *Assessment.* Based on the information submitted for the preliminary eligibility review, the Agency will make an informal assessment of the types of guarantee funding applicable to the request, and the eligibility of the borrower, project, and lender. The Agency will provide written informal comments. The assessment may change based on subsequently submitted information, is solely advisory in nature, does not obligate the Agency to approve a guarantee request, and is not considered a favorable or adverse decision by the Agency.

(2) *Full Applications.*

The Agency will accept applications on a continuous basis. For each loan guarantee request, the lender must submit to the Agency a complete application as specified in paragraphs (i) through (xv) of this section. Lenders must submit complete applications in order to be considered for loan guarantees. Lenders are encouraged to submit a complete application in a single package; however, the Agency may accept the environmental information required by the Agency and initiate and complete its environmental reviews in advance of receiving a complete application. Materials and information submitted for a preliminary eligibility review do not need to be resubmitted, however, any such materials and information that have been revised or updated must be resubmitted in full. If an application is incomplete, the Agency will notify the lender in writing of the items necessary to address the incomplete application. Upon receipt of a complete application, the Agency will complete its evaluation.

(i) Agency-approved application form.

(ii) Credit evaluation, conforming to Lender's Credit Evaluation at Section D.(c) of this notice.

(iii) Environmental information required by the Agency in accordance with 7 CFR 1970, "Environmental Policies and Procedures," to conduct its environmental reviews.

(iv) Financial statements.

(A) Current Agency-acceptable balance sheet and year-to-date income statements of the borrower, affiliated entities with business relationships, and any guarantor(s) dated within 90 days of submission of the complete application.

(B) Agency-acceptable historical balance sheet, income statements, and cash flow statements of the borrower for the lesser of the last three fiscal years or all years of operation; and

(C) Projected balance sheets, income statements, and cash flow statements or a financial model starting from the current financial statements through a minimum of two years of the project performing at full operational capacity or stable operations. Based on the type of project or at the discretion of the Agency, financial projections or models may be required from current financial statements up to the end of the term of the guaranteed loan. Financial projections must be supported by a list of assumptions showing the basis for the projections. Projected financial statements must include a pro forma balance sheet projected for guaranteed loan closing.

(D) Operational cash flow projections on a quarterly basis from the current financial statements through start-up or occupancy for projects involving construction when lenders are requesting the loan note guarantee prior to completion of construction.

(E) The Agency may request additional financial statements, financial models, cash flow information, updated financial statements, and other related financial information to determine the financial feasibility of a project and evaluate the credit underwriting of the borrower, its affiliates, and any guarantors.

(v) Identify whether the borrower has a known relationship or association with an Agency employee. If there is a known relationship, identify each Agency employee with whom the borrower has a known relationship.

(vi) Current credit reports or the equivalent on the borrower, any payment guarantors and any person or entity owning greater than a 20 percent or more interest in the borrower or controls the borrower, except for passive investors and those corporations listed on a major stock exchange. A credit report or its equivalent are not required for elected and appointed officials when the borrower is a public body, or Indian Tribe, or for members of a non-profit organization. Credit reports must be submitted to the Agency for all applications for guaranteed loans in the amount of \$200,000 or more. For lenders that

are submitting smaller requests, the lender must keep the credit report on file with the lender's application.

(vii) Executive Summary. The executive summary must include a description of the business and project; the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship; description of how the project will increase the capacity or make the food supply chain more resilient, diverse, or secure; and address how the borrower or project, as applicable, meet the criteria for priority scoring as described in section E.(c)(4) of this notice.

(viii) Organizational documents.

(ix) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission regulations, a copy of SEC Form 10-K, "Annual Report Pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934."

(x) Intergovernmental consultation comments in accordance with RD Instruction 1970-I and 2 CFR part 415, subpart C, or successor regulation, unless exemptions have been granted by the State single point of contact. Applications from Federally recognized Indian tribes are not subject to this requirement.

(xi) Borrowers must provide evidence of compliance with applicable authorities. Borrowers engaged in processing of meat, poultry, processed egg products, and Siluriformes must comply with the requirements of the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service. Borrowers engaged in processing of other foods and food ingredients must comply with the requirements of the Food and Drug Administration. All borrowers must also be in compliance with requirements of state and local governments.

(xii) At the time of the loan application, the lender must submit its loan classification and credit risk rating classification scale.



(xiii) A feasibility study of the proposed project, by a qualified consultant, is required. At a minimum, a feasibility study must include an evaluation of the economic, market, technical, financial, and management feasibility and an executive summary that reaches an overall conclusion as to the business' chance of success. The feasibility study must consider the borrower's management experience; sources of capital; products, services, and pricing; marketing plan; proposed use of loan funds; availability and access to labor, raw materials including animals and product, and supplies; availability or access to necessary infrastructure including water and waste disposal; worker and food safety plans; contracts in place; and distribution channels. The feasibility study should address and quantify how the project will increase capacity or make the food supply chain more resilient, diverse, or secure. For proposed financing activities involving beef, pork, chicken, or turkey processing, corroborate that the borrower meets the borrower eligibility provisions and self-certify that the borrowers, their affiliated entities, and entities providing processing services through contractual, lease or service agreements with the borrower, do not at the time of application hold a market share greater than or equal to the entity that holds the fourth largest share of the market for the species subject to the proposed financing.

(xiv) Appraisals of collateral are required as set forth in this section. The lender is responsible for ensuring that appraisal values adequately reflect the actual value of the collateral based on an arm's length transaction. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the lender must submit an estimated appraised value. Prior to the issuance of the loan note guarantee, the estimated value must be supported with an appraisal acceptable to the agency.

(A) *Newly-acquired chattel*. A bill of sale may be submitted to support the value of newly-acquired chattel.

(B) *Existing chattel*. The lender must obtain appraisal(s) for existing chattel collateral when its value exceeds \$250,000.

(C) *Real estate*. The lender must obtain appraisals for real estate collateral when the value of the collateral exceeds \$500,000 or the current limitation established under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Public Law 101-73, 103 Stat. 183 (1989). Real estate and chattels with a value below these thresholds must be evaluated in accordance with the lender's primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, in accordance with normal banking practices and generally accepted methods of determining value.

(D) *Construction Project*. For construction projects, the lender must:

(1) Obtain the "As Is" market value and the "prospective" market value as of the date of construction completion to determine the value of the real estate property, or

(2) Obtain an income-based appraisal as of the date of completion to determine the value of revenues to be generated by the real estate.

(E) *Appraisal standards*.

(1) Each real estate appraisal must be conducted by an independent qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) or successor standards. All real estate appraisals must meet the requirements contained in the FIRREA, and the appropriate guidelines contained in Standards 1 and 2 of the USPAP and be performed by a State Certified General Appraiser licensed in the state in which the real estate is located.

(2) Chattel appraisals must be conducted by an independent qualified appraiser and must be based on industry recognized standards and reflect the age, condition, and remaining useful life of the equipment.

(F) *Interagency appraisal and evaluations guidelines.* Notwithstanding any exemption that may exist for transactions guaranteed by a Federal Government agency, all appraisals obtained by the lender under this part must conform to the interagency appraisal and evaluations guidelines established by the lender's primary Federal or State regulator, if applicable.

(G) *Environmental considerations.* When the Agency will take a lien on real property, the real estate appraisals must include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral, as determined in accordance with the appropriate American Society for Testing and Materials (ASTM) International Real Estate Assessment and Management environmental standards.

(H) *Appraisal review report.* The lender must submit its complete technical review of the appraisal in an appraisal review report prepared in compliance with USPAP Standards 3 and 4 to the Agency before guaranteed loan closing.

(I) Appraisals must not be more than one year old. However, the Agency may request a more recent appraisal in order to reflect more current market conditions.

(2) The lender must provide documentation demonstrating that, in addition to the other requirements of this section pertaining to appraisers, the appraiser has the necessary experience and competency to appraise collateral.

(I) *Appraisal fees.* Unless otherwise stated in this part, appraisal fees or any other associated costs will not be paid by the Agency.

(xv) Any additional information required by the Agency to complete its evaluation.

(c) *Lender's Credit Evaluation*

The lender is responsible for originating a guaranteed loan in accordance with the requirements of this notice and in accordance with its internal origination policies and

procedures to the extent they do not conflict with the requirements of this part. For each application, the lender must prepare a credit evaluation that is consistent with Agency standards found in this notice. The Agency reserves the right to review the lender's credit evaluation and request additional information. Lender approval does not constitute Agency approval.

(1) *Lender's evaluation guidelines.* The lender must conduct a credit evaluation using credit documentation procedures and underwriting processes that are consistent with generally accepted prudent lending practices for commercial, public and project financing, and are also consistent with the lender's own policies, procedures, and lending practices. The underwriting process must include a review of each loan for which a loan guarantee is being sought under this notice. Applications involving affiliated entities must include a global credit evaluation and if applicable a global historical and projected debt service coverage analysis. The analysis should evaluate the relationships between all associated parties to determine potential risks which may affect the borrower and its ability to repay the loan. Entities which may have an impact on the borrower or significantly contribute to the repayment ability of the loan should provide financials for global analysis. Applications involving guarantor(s) must also include a global debt service coverage analysis of the guarantor(s) including the cash flow of the guarantor(s). In addition, the lender must review all applicable contracts, management agreements, and leases to determine they will not adversely affect either the borrower's repayment ability or the value of the collateral securing the guaranteed loan. The lender's evaluation must address any financial or other credit weaknesses of the borrower and project and discuss risk mitigation requirements imposed by the lender.

(2) *Content.* The credit evaluation must be sufficiently detailed to describe the proposed loan, business and project structures and document that the proposed loan is feasible. The credit evaluation must include:

(i) A written evaluation of each credit factor listed in paragraphs (3)(i) through (v) of this section and any additional factors as appropriate;

(ii) A written evaluation of the feasibility study, executive summary, technical report, and engineering and architectural reports, as applicable;

(iii) Spreadsheets and analysis of the financial statements provided in accordance with the Application and Submission Information, with appropriate ratios and comparisons with industry standards (such as Dun & Bradstreet or the Risk Management Association). The spreadsheets should enable a reviewer to easily scan the data, spot trends, and make comparisons. The analysis should include comments on the business' performance trends comparison to the industry averages and steps or proposals the borrower has taken to address any financial or industry weakness;

(iv) Analysis of any financial projections deviating from historical financial performance and such projections must be substantiated and documented;

(v) Analysis of projected operational cash flow on a quarterly basis for borrowers with seasonal cyclical cash flow; and

(vi) Analysis of operational cash flow on a quarterly basis from the current financial statements through start-up or occupancy for projects involving construction when lenders are requesting the loan note guarantee be issued prior to completion of construction. The analysis should address the borrower's construction schedule and address their projected cash flow needs as the project is being completed. The cash flow analysis must indicate whether this cash flow is being provided by the guaranteed loan, borrower equity, or other sources.

(3) *Credit factors.* In performing its credit evaluation, the lender must analyze all credit factors associated with each proposed guaranteed loan and apply its professional judgment to determine that the credit factors and guaranteed loan terms and conditions, considered in combination, ensure guaranteed loan repayment. Credit factors to be

analyzed include, but are not necessarily limited to, those areas identified and defined in paragraphs (3)(i) through (v) of this section.

(i) *Character*. Those qualities that generally impel the borrower to meet its obligations as demonstrated by its credit history, including project and borrower debt structure and debt repayment ability. When applicable, an evaluation may include the character of persons with management control or a 20 percent or more ownership interest in the borrower. When the borrower's credit history or character is negative, the lender will provide the basis for the resolution of any issue and why it is unlikely to impact future financial results. The ownership or membership structure of the project and borrower (including membership, sponsors, other equity investors), and the historical performance and experience of ownership and management specific to the project and industry. The historical performance and experience of any entities providing management or administrative services pursuant to contract should also be evaluated.

(ii) *Capacity*. A borrower's ability to produce sufficient cash to repay the guaranteed loan as agreed, including the feasibility and likelihood of the project and borrower to produce sufficient revenues to service the project's debt obligations over the life of the guaranteed loan and, when applicable, result in sufficient returns to investors to ensure successful repayment of the guaranteed loan. The lender shall address any economic safeguards of the project, including capital expenditure budgeting or reserve funds and other contingency reserve funds such as maintenance reserve funds or debt service reserve funds, intended to protect and safeguard the Agency and lender in the event of default. The lender must make all efforts to:

(A) Ensure that the borrower has adequate working capital, operating capital and reserves for capital expenditures, debt service, and maintenance as applicable; and

(B) Structure or restructure debt so the borrower has adequate debt coverage, documenting as applicable the necessity of any debt refinancing. The evaluation will be supported by a cash flow analysis.

(iii) *Capital*. The borrower must have the resources to adequately capitalize the project and demonstrate the ability to generate and maintain sufficient cash flow for its operations. The extent to which project costs are funded by the borrower in relation to project costs funded by the guaranteed loan or other Federal and non-Federal governmental assistance such as grants, tax credits, or other loans must be analyzed.

(iv) *Collateral*. This criterion refers to the security pledged for the guaranteed loan. The lender is responsible for obtaining and maintaining proper and adequate collateral for the guaranteed loan. All collateral must secure the entire guaranteed loan. The lender is prohibited from taking separate collateral for the guaranteed and unguaranteed portions of the guaranteed loan or requiring compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the guaranteed loan. Collateral can include but is not limited to: general obligation bonds; revenue bonds; pledges of taxes or assessments; assignments of facility revenue and byproduct revenue, as well as other assets such as land, easements, rights-of-way, water rights, buildings, machinery, equipment, inventory; and accounts receivable, other accounts, contracts, cash, assignments of leases and leasehold interests. Intangible assets may serve as collateral, provided they do not serve as primary collateral and are no more than 25 percent of the overall collateral package being pledged as security for the guaranteed loan. For purposes of determining compliance with this requirement, leasehold improvements such as buildings and other structures on leased property are considered tangible assets and can serve as primary collateral. It is the lender's responsibility to obtain, document, file, record and take all actions necessary to

properly perfect and maintain adequate collateral to protect the interests of the lender and the Agency.

(A) The lender must determine the market value of collateral as established by an appraisal in accordance with Section D.(b)(2)(xiv) of this notice.

(B) The lender should discount collateral consistent with sound loan-to-discounted value practices which must be adequate to secure the guaranteed loan in accordance with this section. To assess collateral adequacy and appropriate levels of discounting, the lender should consider the type, quality, location, marketability, and alternative uses of the collateral and the basis for the valuation of the collateral, *e.g.*, collateral valued on a cost or replacement valuation, market or comparable sales valuation may require variance of discount factors. The lender must provide satisfactory justification of the discounts being used.

(v) *Conditions.* This factor refers to the general business environment, including the regulatory environment affecting the business or industry, and status of the borrower's industry. Consideration will be given to items listed below and, when applicable, the lender should submit supporting documentation (*e.g.*, feasibility study, market study, preliminary architectural or engineering reports, etc.):

(A) Availability and depth of resource or feedstock market, strength and duration of purchase agreements and availability of substitutes;

(B) Analysis of current and future market potential, off-take agreements, competition, and type of project (service, product, or commodity based);

(C) Energy infrastructure, availability and dependability, transportation and other infrastructure, and environmental considerations;

(D) Technical feasibility including demonstrated performance of the technology and integrated processing equipment and systems, system performance guarantees by the developer, and availability of technology performance insurance;



(E) Complexity of construction and completion, terms of construction contracts and experience and financial strength of the construction contractor or engineering, procurement and construction (EPC) contractor;

(F) Contracts and intellectual property rights, licenses, permits, and state and local regulations;

(G) Creditworthiness of any counterparties, as applicable;

(H) Industry-related public policy issues; and

(I) Other criteria that the lender or Agency deems relevant to the project.

(d) *Intergovernmental Review.*

Executive Order (EO) 12372, “Intergovernmental Review of Federal Programs,” applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments, including, a county, municipality, town, township, village, or other unit of general government, including tribal governments, below the State level. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain an SPOC, please see the White House Web site:

<https://www.whitehouse.gov/omb/management/office-federal-financial-management/>. If your State has an SPOC, you may submit a copy of the application directly for review.

Any comments obtained through the SPOC must be provided as part of your application.

Applications from Federally recognized Indian tribes are not subject to this requirement.

## **E. Application Review Information**

(a) *General.* The Agency will evaluate all applications according to the provisions of this part and may require the lender to obtain additional assistance in those areas where the lender does not have the necessary expertise to originate or service the guaranteed loan.

(b) *Evaluation and eligibility determinations.* The Agency will review each complete application to make a formal determination as to the eligibility of the borrower, lender, project, and guaranteed loan purpose and proposed use of funds; whether there is a reasonable assurance of repayment ability; whether sufficient collateral and equity exists; whether the proposed guaranteed loan complies with all applicable statutes and regulations; and whether the environmental review is complete.

(1) If the Agency's evaluation and determination in accordance with this paragraph (b) is favorable, the Agency will proceed in accordance with paragraph (c) of this section.

(2) If the Agency's evaluation and determination in accordance with this paragraph (b) is unfavorable, the Agency will notify the lender, in writing, identifying the reason(s) for determining ineligibility and any applicable appeal or review rights. No further processing of the application will occur. If the Agency determines it is unable to guarantee the loan, it will inform the lender in writing.

(c) *FSC guaranteed loan priority scoring*

(1) The Agency will consider applications in the order they are received by the Agency; however, for the purpose of assigning priority points as described in this paragraph, the Agency will compare an application to other pending applications that are competing for funding.

(2) When applications on hand otherwise have equal priority, the Agency will give preference to applications for guaranteed loans from qualified veterans.

(3) The Agency will consider applications as they are submitted. If available funding is less than what is requested by applications under consideration, the Agency will score each eligible application based on the point system described below.

(4) A maximum of 115 points can be awarded in the following categories:

(i) Applicants receive 8 priority points if the project is located in or serving one of the top 10% of counties or county equivalents based upon county risk score as listed in the COVID-19 Economic Risk Assessment Dashboard and according to guidance at <https://www.rd.usda.gov/priority-points>.

(ii) Applicants receive 8 priority points if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index and according to guidance at <https://www.rd.usda.gov/priority-points>.

(iii) Applicants will receive 8 priority points for either (A) or (B), according to guidance at <https://www.rd.usda.gov/priority-points>.

(A) Applicants will receive points if the project is located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks more than 80 on the Distressed Communities Index.

(B) Applicants will receive points by demonstrating through written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

(iv) Applicants will receive 5 priority points if the project is located in a city or county with a current unemployment rate, as determined by the Department of Labor, of 125 percent of the State-wide rate or greater. Or, for projects located in certain territories that may not have unemployment rates by localities, the applicant will receive priority points if the applicant's proposed service area has an unemployment rate exceeding 125 percent of the national unemployment rate as determined by the Bureau of Labor Statistics. The national unemployment rate may be found at <https://www.bls.gov/cps>.

(v) Applicants will receive 5 priority points if the project is located within the boundaries of a federally recognized Indian Tribe's reservation, within Tribal trust lands, or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.

(vi) Applicants will receive 20 priority points if the industry is not already present in the local community.

(vii) Applicants will receive 21 priority points if the business is locally owned and managed. (The primary residence of the applicant must be located within the normal commuting area of the guaranteed loan project.)

(viii) Applicants will receive 15 priority points if the project creates or saves a minimum of five permanent jobs with an average wage exceeding 200 percent of the Federal minimum wage.

(ix) Applicants will receive 10 priority points if the business offers a healthcare benefits package to all employees and pays at least 50 percent of the healthcare premium.

(x) Applicants receive 15 priority points if the borrower ensures and certifies to the lender that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this Notice are paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40, U.S.C. Loans guaranteed under this Notice for applicants that receive such priority points are further subject to the relevant regulations contained in 29 CFR part 5.

## **F. Federal Award Administration Information**

### *(a) Conditional commitment*

(1) *Approval.* Upon approval of a loan guarantee the Agency will issue a “Conditional Commitment” to the lender, containing conditions under which a loan note guarantee will be issued. No conditional commitment can be issued until the loan is obligated. If a loan note guarantee is not issued by the conditional commitment expiration

date, the conditional commitment may be extended at the request of the lender pending approval of the Agency and only if there has been no material adverse change in the borrower or the borrower's financial condition since issuance of the conditional commitment. If the conditional commitment is not accepted, the conditional commitment may be withdrawn, and funds may be de-obligated in accordance with F.(a)(4) of this notice. Likewise, if the conditional commitment expires, funds may be de-obligated in accordance with section F.(a)(5) of this notice.

(i) Upon acceptance of the conditional commitment, the lender agrees not to modify the scope of the project, overall facility concept, project purpose, use of guaranteed loan funds, or other terms and conditions without Agency written concurrence in accordance with section F.(a)(5) of this notice.

(ii) If the lender decides at any time after receiving a conditional commitment that it no longer wants a loan guarantee, the lender must immediately advise the Agency of the cancellation in writing. Upon written notification from the lender, the Agency will de-obligate the funds associated with the conditional commitment.

(2) *Content.* The conditional commitment will contain the terms required for issuing a loan note guarantee, including but not limited to:

(i) Approved use of guaranteed loan funds and all project funds (sources and uses of funds);

(ii) Rates and terms of the loan;

(iii) Loan agreement terms including, but not limited to:

(A) Repayment terms and amortization provisions of the guaranteed loan;

(B) Description of real property collateral, list of other collateral and identification of the lender's lien priority in the collateral;

(C) Identification of persons and entities guaranteeing payment of the guaranteed loan and their percentage of guarantee;

(D) Type and frequency of the financial statements to be provided by the borrower and guarantor during the term of the guaranteed loan (guarantor statements must be updated at least annually);

(E) Prohibition against borrower assuming liabilities or obligations of others;

(F) Limitations on borrower dividend payments and compensation of officers, owners, and members of borrower;

(G) Limitations on the purchase and sale of equipment and other fixed assets;

(H) Restrictions on mergers, consolidations, or sales of the business, project, or guaranteed loan collateral without the concurrence of the lender;

(I) Limitations on significant management changes without the concurrence of the lender;

(J) Maximum debt-to-net worth ratio or other test for leverage as required by lender;

(K) Minimum debt service coverage ratio or other cash coverage test as required by the lender;

(L) Requirements imposed by the Agency in its conditional commitment;

(M) Agency environmental requirements;

(N) Requirement for the lender and the Agency to have reasonable access to the project including access for periodic inspections of the project by a representative of the lender or the Agency; and

(O) Requirement for the borrower to provide the lender and the Agency performance information during the term of the guaranteed loan.

(iv) Loan closing requirements;

(v) Lender and borrower certifications;

(vi) Collateral and lien position requirements; and

(vii) Other requirements necessary to protect the Agency.

(3) *Change requests.* The lender can request, in writing, changes to the conditional commitment with justification. The Agency can deny, solely at its discretion, changes to the conditional commitment even if the changes are otherwise in compliance with this part. All changes to the conditional commitment must be documented by written amendment to the conditional commitment executed by all parties.

(4) *Acceptance or withdrawal of conditional commitment.* The lender and borrower must complete and sign the conditional commitment and return a copy to the Agency within 60 days. If the conditional commitment is not accepted by both the lender and borrower within 60 days, the conditional commitment becomes null and void and the Agency will withdraw the conditional commitment and de-obligate the associated funds.

(5) *Modification, and expiration of conditional commitment.* The conditional commitment issued by the Agency will be effective for a period of one year or sufficient time to complete the guaranteed loan project prior to loan closing. The lender must submit a written request to the Agency to extend the conditional commitment at least 30 days prior to its expiration date and obtain Agency approval for the extension. The Agency will consider this request only if no material adverse changes in the borrower or the borrower's financial condition have occurred since issuance of the conditional commitment. If a conditional commitment expires, the Agency will notify the lender in writing and may de-obligate the funds. Any additions or modifications to conditions stated in the original conditional commitment must be agreed upon between the lender, the borrower, and the Agency.

(b) *Changes prior to loan closing.*

(1) *Change in borrower prior to closing.* Any change in borrower ownership or organization prior to the issuance of the loan note guarantee must meet the applicable guaranteed program's eligibility requirements and must be approved by the Agency.

(2) *Transfer to new lender prior to issuance of the loan note guarantee.* Prior to issuance of the loan note guarantee, a lender can request a transfer of an outstanding conditional commitment to a new lender by providing the Agency with a letter from the lender, the borrower, and the proposed new lender. The request must include the reason(s) the current lender no longer desires to be the lender for the project.

(i) The Agency may approve the transfer from the current lender to the proposed new lender provided the new proposed lender is an eligible lender (see H.(e)(1) and (2) of this notice) and no material adverse changes have occurred in the:

(A) Ownership, control, or legal structure of the borrower; and

(B) Borrower's written plan, scope of work, or the purpose or intent of the project.

(ii) The Agency will determine if the proposed new lender is eligible in accordance with this notice prior to approving the transfer of lender. The new lender must execute a new application form and a lender's agreement (unless the new lender already has a valid lender's agreement with the Agency) and must complete a new credit evaluation in accordance with this notice. The Agency may require the new lender to provide other updated application items as specified by the Agency.

(iii) If the Agency approves the transfer to the new lender, the Agency will issue a letter of amendment to the original conditional commitment reflecting the new lender who must acknowledge acceptance of the amended conditional commitment in writing.

(c) *Loan closing and conditions precedent to issuance of loan note guarantee.*

(1) The lender must not close the guaranteed loan until all conditions of the conditional commitment are met. The lender will provide the Agency a draft of the loan agreement for pre-closing review and may provide the Agency draft loan documents for the Agency's concurrence that all conditions of the conditional commitment are met or will be met.



(2) Simultaneously with or immediately after the guaranteed loan closing, the lender must provide to the Agency the following forms and documents:

(i) An executed lenders agreement, unless a lenders agreement executed under this notice was previously submitted to the Agency;

(ii) An Agency-approved, "Guaranteed Loan Closing Report";

(iii) A copy of each executed promissory note and collateral security documents;

(iv) A copy of the executed final loan agreement, which must include any additional requirements imposed by the Agency in the conditional commitment;

(v) The original, executed Agency-approved guarantee form(s) for any required personal, partnership or corporate guarantees;

(vi) The borrower's loan closing balance sheet, if required;

(vii) For loans to public bodies, an opinion from recognized bond counsel regarding the adequacy of the preparation, issuance, and enforceability of the debt instruments;

(viii) Any other documents required to comply with applicable law or required by this part, the conditional commitment, or the Agency; and

(ix) When requesting issuance of a loan note guarantee, the lender must certify to each condition identified in paragraphs (c)(2)(ix)(D)(1) through (23) of this section, as applicable.

(A) In making its certification, the lender can rely on certain written materials (e.g., certifications, evaluations, appraisals, financial statements, and other reports) provided by the borrower or other qualified third parties (e.g., independent engineers, appraisers, accountants, attorneys, consultants, or other experts).

(B) If the lender is unable to provide any of the certifications required under this section, the lender must provide an explanation satisfactory to the Agency.

(C) The lender must certify, in accordance with this notice that the capital/equity requirement was determined, based on a balance sheet prepared in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced. A copy of the loan closing balance sheet must be included with the lender's certification;

(D) The lender may request the loan note guarantee be issued prior to construction in accordance with this notice; however, the lender must still certify to all applicable conditions of this notice and the following:

(1) All requirements of the conditional commitment have been met; and

(2) The financial criteria specified in this notice and any financial criteria contained in the conditional commitment were:

(i) Determined in accordance with any applicable requirements in this notice; and

(ii) Have been maintained through the issuance of the loan note guarantee. Failure to maintain or attain the minimum financial criteria will result in the Agency not issuing a loan note guarantee;

(3) The capital/equity requirement was determined, based on a balance sheet prepared in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced. A copy of the loan closing balance sheet must be included with the lender's certification;

(4) No major changes have been made in the applicant, project or lender's loan conditions or requirements since the issuance of the conditional commitment, unless such changes have been approved by the Agency;

(5) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower during the period of time from the Agency's issuance of the conditional commitment to issuance of the loan note

guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control;

(6) The borrower is a legal entity in good standing with its regulator (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the borrower was organized or has a place of business;

(7) The borrower meets the eligibility requirements as outlined in this notice.

(8) There is a reasonable prospect that the guaranteed loan and other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application;

(9) The guaranteed loan has been properly closed, and the required security instruments have been properly executed and all security interests obtained by the lender have been or will be properly perfected in accordance with applicable law;

(10) All planned property acquisition has been or will be completed; all development has been or will be substantially completed in accordance with plans and specifications and conforms to applicable Federal, Tribal, State, and local codes; all equipment required for the project is available, can be procured and delivered within the project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements; and costs have not exceeded the amount approved by the lender and the Agency;

(11) The proposed project complies with all current Federal, Tribal, State, and local laws and regulatory rules that affect the project, the borrower, or lender activities, including, but not limited to, equal opportunity and Fair Housing Act requirements and design and construction requirements;

(12) All lender-required insurance policies are in effect at the required levels;

(13) All truth-in-lending and equal credit opportunity requirements have been met;

(14) The borrower has marketable title to the collateral then owned by the borrower, subject to the rights of the guaranteed loan and to any other exceptions approved in writing by the Agency;

(15) Where required, necessary or prudent, the borrower has obtained:

(i) A legal opinion relative to the title and accessibility to any rights-of-way and easements; and

(ii) A title opinion or title insurance showing the borrower has good and marketable title to the real property and other collateral and fully addressing all existing mortgages or other lien defects, restrictions or encumbrances. In those cases where there is adequate gap coverage, a title commitment may be acceptable;

(16) All project funds have been or will be disbursed for purposes and in amounts consistent with the conditional commitment (or Agency-approved amendment thereof) and the application submitted to the Agency. Appropriate lender controls were used to ensure that all funds were properly disbursed, including funds for working capital. A copy of a settlement statement by the lender detailing the use of loan and matching/equity funds must be attached to support this certification;

(17) When applicable, the entire amount of the loan for working capital or initial operating expenses have been disbursed to the borrower, except in cases where the Agency has approved disbursement over an extended period of time and funds are escrowed so that the settlement statement reflects the full amount to be disbursed;

(18) When required, personal and/or corporate guarantees have been obtained in accordance with this notice;

(19) Lien priorities are consistent with the requirements of the conditional commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, materialmen, or other parties have been filed against the collateral and no suits are pending or threatened that would adversely affect the collateral;

(20) Neither the lender nor any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender;

(21) The loan agreement includes all borrower compliance measures identified in the Agency's environmental review for avoiding or reducing adverse environmental impacts of the project's construction or operation;

(22) The lender will comply with the requirements of the Debt Collection Improvement Act; and

(23) The lender has executed and delivered the lender's agreement, completed registration in the Agency's electronic reporting system, and electronically submitted the closing report for the guaranteed loan.

*(d) Issuance of the loan note guarantee*

(1) *Issuance.* The Agency, at its sole discretion, will determine if the conditions specified in the conditional commitment have been met and whether to issue the loan note guarantee. When the Agency is satisfied that all the conditions specified in the conditional commitment have been met and it receives all the required fees plus the executed lender's agreement from the lender, the Agency will issue the documents identified in paragraphs (d)(1)(i) through (iii) of this section, as appropriate.

(i) *Loan note guarantee.* The Agency will provide the lender the original loan note guarantee document which the lender must attach to the promissory note. If the lender elected to use the multi-note system, the Agency will issue one loan note guarantee for the set of promissory notes.

(ii) *Assignment guarantee agreement.* If the lender assigns any guaranteed portion of a guaranteed loan to a holder, the lender, holder, and the Agency will execute an assignment guarantee agreement for each assignment. The lender must fully disburse loan

funds of a promissory note for the approved purposes of the loan, prior to assigning the guaranteed portion of a note to a holder and issuance of the Assignment of Guarantee Agreement. Disbursement to an escrow account does not meet this requirement, except for loan funds for working capital.

(iii) *Certificate of incumbency and signature.* The Agency will provide the holder an executed certificate of incumbency form to verify the signature and title of the Agency official who signed the Loan Note Guarantee and the assignment guarantee agreement.

(2) *Agency review of closing.* The Agency will review the closing documents submitted by the lender for completeness and if all conditions have been met and all documents have been provided, the Agency will issue the loan note guarantee. If the Agency determines that it cannot issue the loan note guarantee, the Agency will notify the lender, in writing, of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the Agency will issue the loan note guarantee.

(3) *Cancellation of obligation.* A lender can submit a written request to the Agency for a partial cancellation. The lender must include in this request the reason for the partial cancellation, the effective date, and the portion to be canceled. If the Agency conditions for issuance of the loan note guarantee are rejected, cannot be met, or funds are, in whole or in part, no longer needed, the Agency will cancel the obligation.

(e) *Replacement of loan note guarantee and assignment guarantee agreement.*

If a loan note guarantee or assignment guarantee agreement has been lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the Agency may issue a replacement to the lender or holder, as applicable under the conditions described in (1) and (2) of this paragraph. The lender is prohibited from altering or modifying or approving any alterations to or modifications of any loan documents without the prior written approval of the Agency.

(1) Replacement requirements. The lender must coordinate the activities of the party who seeks the replacement documents and must submit the required documents to the Agency for processing. A written statement of loss must be provided. The statement of loss must include:

(i) Legal name and present address of either the lender or the holder who is requesting the replacement forms;

(ii) Legal name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the loan note guarantee or assignment guarantee agreement including the name of the borrower, the Agency's case number, date of the loan note guarantee or assignment guarantee agreement, face amount of the promissory note in which an interest was purchased, date of the promissory note, present balance of the guaranteed loan, percentage of guarantee, and, if an assignment guarantee agreement, the original named holder and the percentage of the guaranteed portion of the guaranteed loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the loan note guarantee or assignment guarantee agreement; and

(vi) For the holder, evidence demonstrating current ownership of the assignment guarantee agreement. If the present holder is not the same as the original holder, the lender must include a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder. If copies of the endorsement cannot be obtained, the lender must submit the best available records of transfer (e.g., order confirmation, canceled checks, etc.).

(2) Indemnity bond. An indemnity bond acceptable to the Agency must accompany the request for replacement except when the holder is the United States, a

Federal Reserve Bank, a Federal Government corporation, a State or territory, the District of Columbia or an Indian Tribe. The indemnity bond must:

(i) Be issued by a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570, except when the outstanding principal balance and accrued interest due the present holder is less than \$1 million as verified by the lender via a written letter of certification of balance due;

(ii) Be issued and payable to the United States of America acting through the Agency;

(iii) Be in an amount not less than the unpaid principal and interest; and

(iv) Hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reason of the loss or replacement of the instruments.

(f) *Other Federal, Tribal, State, and local requirements.*

Beginning on the date of issuance of the loan note guarantee, lenders and borrowers must:

(1) Coordinate with all appropriate Federal, Tribal, State and local agencies that may have jurisdiction or involvement in each project; and

(2) Comply with all current Federal, Tribal, State and local laws and rules, as well as applicable regulatory commission rules, that affect the project, borrower, or lender.

Compliance activities include, but are not limited to:

(i) Organization and borrower's authority to design, construct, develop, operate, and maintain the proposed facilities;

(ii) Borrowers engaged in processing of meat, poultry, processed egg products, and Siluriformes must comply with the requirements of the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service. Borrowers engaged in



processing of other foods and food ingredients must comply with the requirements of the Food and Drug Administration;

(iii) Borrowing money, giving security, and raising revenues for repayment;

(iv) Land use zoning;

(v) Health, safety, and sanitation standards as well as design and installation standards; and

(vi) Protection of the environment and consumer affairs.

(g) *Planning and performing development.*

In complying with the requirements of this section, the lender may rely on written materials and other reports provided by an independent engineer and other qualified consultants.

(1) *Design requirements.* The lender must ensure that all facilities constructed with guaranteed loan funds are:

(i) Designed using accepted architectural, engineering, and design practices, taking into consideration any Agency comments when the facility is being designed;

(ii) Designed in conformance with applicable Federal, Tribal, State, and local codes and requirements; and

(iii) Constructed to support operations at the level and quality contemplated by the borrower using accepted architectural and engineering practices.

(2) *Rights-of-ways, easements, and property rights.* The lender is responsible for ensuring that the borrower has:

(i) Obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a project; and

(ii) Obtained and recorded such releases, consents, or subordinations to such property rights from lienholders of outstanding liens or other instruments as may be

necessary for the construction, operation, and maintenance of the project and to provide the required security.

(3) *Permits, agreements, and licenses.* It is the lender's responsibility to ensure the borrower obtains all permits, agreements, and licenses that are applicable to the project.

(4) *Insurance.* It is the lender's responsibility to ensure the borrower obtains and maintains borrower and project insurance in substance and amount similar to that ordinarily required by lenders in the industry.

(5) *Construction monitoring requirements.* The lender, or its designated agent, will monitor the progress of construction of the project and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, Tribal, State, and local code requirements and that construction proceeds in accordance with the plans, specifications, and contract documents.

(i) *Construction inspections.* The lender must notify the Agency of any scheduled field inspections during construction. The Agency may attend any field inspections the lender may conduct. Any Agency inspection, including those with the lender, are for the benefit of the Agency only (and not for the benefit of other parties in interest) and do not relieve any parties of interest of their responsibilities to conduct necessary inspections.

(ii) *Inspectors.* On a case-by-case basis in the event that the Agency determines that there is additional risk to the government, the Agency may require the use of a qualified, independent inspector to inspect construction to ensure the project is being adequately built to meet the borrower's requirements of the borrower's approved project and comply with all applicable codes and legal requirements.

(6) *Issuance of loan note guarantee prior to completion of the project's construction.* The lender may request that the loan note guarantee be issued prior to completion of a project's construction. The lender's request will be considered by the

Agency, who may require credit risk mitigation. The lender must verify and include evidence of the following in its request:

(i) The promissory note specifying the full term of the note and containing the terms and conditions of each draw period;

(ii) The borrower and lender have entered into a contract with an independent disbursement and monitoring firm with a construction monitoring plan, acceptable to and approved by the Agency, or the lender demonstrates and documents that it has the capacity and experience to disburse funds and provide a monitoring plan acceptable to the Agency;

(iii) The borrower and lender have agreed to a detailed timetable for the project with a corresponding budget of costs setting forth the parties responsible for payment. The timetable and budget will be confirmed as adequate for the planned development by a qualified independent consultant (e.g., the project architect or engineer) with demonstrated experience relating to the project's industry.

(iv) The borrower has entered into a firm, fixed-price construction contract with an independent general contractor with costs outlined in detail and terms specifying change order approvals, the agreed retainage percentage, and the disbursement schedule;

(v) Evidence the lender has properly vetted the financial feasibility and past performance of the contractor to show they are able to complete the project or that the lender has mitigated risk in the event the project is never completed, such as requiring a 100-percent performance/payment bond on the borrower's contractor to be maintained until the contractor is released from its obligation. The bonding agent must be listed on Treasury Circular 570;

(vi) Evidence, which the Agency at its sole discretion determines is satisfactory, that the lender has completed the due diligence necessary to confirm that the contractor is

able to complete the project based on information including, but not limited to, the financial statements and past performance of the contractor;

(vii) When applicable, the borrower has entered into a contract with an independent technology development firm guaranteeing the following: completion of the project with the necessary technology to successfully run the project and system performance for projects that utilize integrated processing equipment and systems. The intent of this provision is to ensure that all technology proposed for the project can be successfully integrated together to ensure successful installation and performance of the system;

(viii) Evidence, in form and substance satisfactory to the Agency, that sufficient contingency funding is in place to handle unforeseen cost overruns without seeking additional guaranteed assistance.

(7) *Reporting during construction.* Regardless of when the loan note guarantee is issued, all lenders must report any problems in project development to the Agency within 15 calendar days of identifying the problem. If the loan note guarantee has been issued prior to construction or completion of the project, the lender must provide monthly construction reports that contain:

(i) Certifications for each draw request as follows:

(A) Certification by the independent engineer or qualified consultant to the lender that the work referred to in the draw has been successfully completed; and

(B) Certification by the borrower and independent engineer or qualified consultant that the guaranteed loan funds of the prior draw have been applied to eligible project costs in accordance with the draw request and that the contractors have delivered mechanics lien waivers in connection with such draw;

(ii) List of invoices;

(iii) Details regarding the borrower's equity, other funds, and guaranteed loan funds disbursed to date;

(iv) Status of construction and inspection reports;

(v) Inspection reports; and

(vi) Explanation of concerns, potential problems, cost overruns, etc.

(8) *Use of guaranteed loan funds.* The lender must ensure that:

(i) All borrower funds are utilized prior to guaranteed loan funds;

(ii) Guaranteed loan funds are only used for eligible project costs in accordance with the purposes approved by the Agency in the conditional commitment and in accordance with the plans, specifications, and contract documents; and

(iii) The project will be completed within the approved budget.

(9) *Project completion.* Once construction of the project is completed, the lender must obtain and have on file all mechanics lien waivers or releases from all contractors and materialmen. The lender will provide to the Agency:

(i) A copy of the notice of completion or similar document issued by the relevant jurisdiction;

(ii) Certification that all funds were used for authorized purposes; and

(iii) A written certification that the project will be used for its intended purpose and will meet the borrower's needs and guaranteed loan purposes in accordance with the application approved by the Agency.

(h) *Compliance with other Federal laws.* Lenders and Borrowers must comply with other applicable Federal laws, including Equal Employment Opportunity Act, the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility

Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

(i) *Environmental responsibilities.* The lender must ensure that the borrower has:

(1) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, “Environmental Policies and Procedures,” or successor regulation, including the provision of all required Federal, State, and local permits;

(2) Complied with any mitigation measures required by the Agency; and

(3) Not taken any actions or incurred any obligations with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or that would have an adverse effect on the environment.

(j) *Servicing.*

(1) The provisions of 7 CFR 5001 Subpart F, including applicable definitions, will apply for servicing the loans guaranteed under this notice, including oversight, monitoring and reporting requirements and project completion requirements that are applicable to each guaranteed loan made under this part, except as may be otherwise indicated. Servicing topics covered include audits and financial reports; collateral; loan transfers and assumptions; lender transfers; mergers; servicing fees; subordinations of lien position; repurchases; additional expenditures and loans; interest rate changes; lender failures; borrower defaults; protective advances; liquidation; bankruptcy; litigation; loss calculations and payments; future recovery; property acquired by the lender; and termination of the loan note guarantee.

(2) In addition to the financial reports required under 7 CFR 5001.504, commencing the first full calendar year following the year in which project construction was completed and continuing for three full years, the lender shall obtain from the

borrower and submit to the agency an outcome project performance report noting the project's success in increasing capacity or contributing to the resilience, diversity, or security of food supply chains. The project performance metrics shall align with the information provided in the feasibility study about how the project would increase capacity or make the food supply chain more resilient, diverse, or secure. If the project has not performed as intended, a report detailing the circumstances affecting performance must be provided to the Agency. The lender must submit project performance reports to the Agency within 120 days of the end of the borrower's fiscal year.

#### **G. Federal Awarding Agency Contact(s)**

For general questions about this notice, please contact [rdfoodsupplychainloans@usda.gov](mailto:rdfoodsupplychainloans@usda.gov) as outlined in the ADDRESSES section of this notice or the program website at:

<https://www.rd.usda.gov/foodsupplychainloans>.

#### **H. Other Information**

(a) *Exception authority.* The Administrator may, on a case-by-case basis grant an exception to any requirement or provision of this notice provided that such an exception is in the best financial interests of the Federal government. Exercise of this authority cannot be in conflict with applicable law.

(b) *Appeals.* Borrowers, lenders, and holders may have appeal or review rights for Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by NAD. All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part

(1) The borrower, lender, and holder can appeal any Agency decision that directly and adversely affects them.

(i) For an adverse decision that affects the borrower, the lender and borrower must jointly execute a written request for appeal of an adverse decision made by the Agency.

(ii) An adverse decision that affects only the lender can be appealed by the lender only.

(iii) An adverse decision that affects only the holder can be appealed by the holder only.

(2) In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision can be appealed only by the lender.

(3) A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, even if it was concurred in by the Agency, and therefore cannot be reviewed for appealability or appealed to NAD.

*(c) General lender responsibilities.*

(1) Lenders are responsible for originating and servicing loans guaranteed by the Agency under this notice in accordance with the provisions of this notice. Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities.

(2) Lenders can contract for services, but such contracting does not relieve a lender from its responsibilities as identified in this notice.

(3) If a lender fails to comply with the requirements of this notice, the Agency may reduce any loss payment in accordance with the lender's agreement and loan note guarantee.

(4) Lenders are responsible for becoming familiar with Federal environmental requirements; considering, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and developing proposals that minimize the potential to adversely impact the environment.



(i) Lenders must assist the borrower in providing details of the project's impact on the environment and historic properties in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," (or successor regulation), when applicable; assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(ii) Lenders must ensure the borrower has:

(A) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, "Environmental Policies and Procedures," or successor regulation, including the provision of all required Federal, Tribal, State, and local permits;

(B) Complied with any mitigation measures required by the Agency; and

(C) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or that will have an adverse effect on the environment.

(iii) Lenders must alert the Agency to any environmental issues related to a proposed project or items that may require extensive environmental review.

(d) *Approvals, regulations, and forms.*

(1) When Agency approval or concurrence is required, it must be in writing and must be obtained prior to the action for which approval or concurrence is required is taken.

(2) All references to statutes and regulations include any and all successor statutes and regulations.

(3) All references to forms include any and all successor forms as specified by the Agency.

(4) Copies of all regulations and forms referenced in this notice can be obtained through the Agency and from the Agency's website at [https://www.rd.usda.gov/foodsupplychainloans\\_](https://www.rd.usda.gov/foodsupplychainloans_)

*(e) Eligible lenders.*

(1) To become a lender under this notice, the lending entity must meet the requirements specified in 7 CFR § 5001.130 Lender eligibility requirements. Lenders approved by the Agency as an eligible lender under 7 CFR § 5001.130 and that are in compliance with 7 CFR § 5001.132 "Maintenance of approved lender status" and the requirements of this notice, are eligible lenders under this notice. Lenders must **continue to comply** with the requirements of 7 CFR § 5001.132 "Maintenance of approved lender status."

(2) All lenders must have a UEI which can be obtained at <https://www.SAM.gov/content/home>.

(i) Each lender applying for loan guarantee must (A) be registered in the System for Award Management (SAM) before submitting its application and (B) provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(ii) Lender must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active FSC guaranteed loan or an application under consideration by the Agency.

(iii) Lender must complete the Financial Assistance General Certifications and Representations in SAM.

(iv) The Agency will not determine lender eligibility until the lender has complied with all applicable UEI and SAM requirements. If a lender has not fully complied with the requirements by the time the Agency is ready to approve the guaranteed loan application, the Agency may determine that the lender is not eligible under this notice.

*(f) Lender's agreement.*

Agency approval of the lender will be evidenced by an outstanding lender's agreement, between the Agency and the lender. When approved to participate as a lender under this notice, the lender must execute a lender's agreement before the Agency will issue a loan note guarantee.

(g) *Access to records.*

The lender must permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency. In addition, the lender must cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee to ensure compliance with this Notice. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders.

(h) *Guarantee provisions.*

(1) A loan note guarantee issued under this notice constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder, or which a lender or holder participates in or condones.

(2) A guaranteed loan under this notice will be evidenced by a loan note guarantee issued by the Agency.

(3) The entire loan must be secured by the same collateral with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the guaranteed loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior lien position in the guaranteed loan collateral may be considered on a case-by-case basis and must be approved by the Agency.

(4) The lender must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the guaranteed loan.

(5) The lender will receive all payments of principal and interest on account of the entire guaranteed loan and must promptly remit to each holder and participant, if any, its pro rata share of any payment within 30 days of the lender's receipt thereof from the borrower. Holder or participant payments are determined according to their respective interest in the guaranteed loan, less only the lender's servicing fee.

(6) Any claim against a loan note guarantee or assignment guarantee agreement that is attached to, or relating to, a promissory note that provides for payment of interest-on-interest, default charges, penalty interest, or late payment fees will be reduced to remove such interest, fees, and charges.

(7) The loan note guarantee is unenforceable by the lender to the extent that any loss is occasioned by:

(i) The violation of usury laws;

(ii) Use of guaranteed loan funds for unauthorized loan purposes in accordance with Section C.(d) of this notice or to the extent that those funds are used for purposes other than those specifically approved by the Agency in its conditional commitment or amendment thereof;

(iii) Failure to obtain, perfect, document, and or maintain the required collateral or security position regardless of the time at which the Agency acquires knowledge thereof; and

(iv) Negligent loan origination or negligent loan servicing as determined and documented by the Agency.

(8) The Agency will guarantee payment as follows:

(i) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the guaranteed loan it owns and on interest due (as determined under paragraph (h)(9) of this section) on such portion less any outstanding servicing fee.

(ii) To the lender, any loss sustained by the lender on the guaranteed portion of the guaranteed loan, including principal and interest (as determined under paragraph (h)(9) of this section) evidenced by the promissory note(s) or assumption agreements entered into in connection with an Agency approved transfer and assumption, and secured advances for protection and preservation of collateral made with the Agency's authorization if applicable.

(9) Accrued interest payments. The Agency will guarantee accrued interest in accordance with paragraph (h)(9)(i) or (ii), as applicable, of this section.

(i) If the lender owns all or a portion of the guaranteed portion of the guaranteed loan or makes a protective advance, the Agency, in its sole discretion, may cover interest on the guaranteed portion for the 90 days from the most recent delinquency effective date, and up to a total of 180 days, only if:

(A) The lender, and not the Agency, has repurchased all holder interests in the guaranteed loan;

(B) The lender is actively engaged in a credit resolution with the borrower to bring the account current or fully liquidate the collateral under the terms of a liquidation plan approved by the Agency; and

(C) Concurrence for inclusion of the extended period of interest to the lender is received from the Agency.

(ii) If the guaranteed loan has one or more holders, the lender will issue an interest termination letter to each holder establishing the termination date for interest accrual. The loan note guarantee will not cover interest to any holder accruing after the greater of 90 days from the date of the most recent delinquency effective date as reported by the lender

or 30 days from the date of the interest termination letter. The Agency at its sole discretion may notify each holder of the interest termination provisions if it is determined that lender correspondence to holders is in-adequate.

*(i) Participation or assignment of guaranteed loan.*

(1) *General.* The lender may obtain participation in the loan or assign all or part of the guaranteed portion of the guaranteed loan on the secondary market subject to the conditions specified in paragraphs (1) through (8) of this section or retain the entire guaranteed loan.

(2) *Participation.* The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to and possession of the promissory note(s) and retain the lender's interest in the collateral.

(3) *Assignment.* Any assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the lender's agreement and the provisions of this section. The holders and the borrower have no rights or obligations to one another.

(4) *Minimum retention by the lender.* Minimum retention at all times must be from the unguaranteed portion of the loan and cannot be participated to another person.

(i) The lender must hold a minimum of 7.5 percent of the total loan amount.

(ii) The lender must retain its security interest in the collateral and retain the servicing responsibilities for the guaranteed loan.

(iii) The Agency can approve a reduction of the minimum retention requirement below the applicable percentage on a case-by-case basis when the lender establishes to the Agency's satisfaction that reduction of the minimum retention percentage is necessary to meet compliance with the lender's regulatory authority.

(5) *Prohibition.* The lender must not assign or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower, borrower's officers,

directors, stockholders, other owners, or to members of their immediate families, or to a parent company, an affiliate, or a subsidiary of the borrower.

(6) *Secondary market.* The lender must properly close its loan and fully disburse loan funds of a promissory note for the approved purposes of the loan prior to assignment of the guaranteed portion of the promissory note(s) on the secondary market. The lender can assign all or part of the guaranteed portion of the loan only if the loan is not in default.

(7) *Lender's servicing fee to holder.* The assignment guarantee agreement must clearly state the guarantee portion of loan as a percentage and corresponding dollar amount of the guaranteed portion of the guaranteed loan it represents and the lender's servicing fee. The lender cannot charge the Agency a servicing fee and servicing fees are not eligible expenses for loss claim.

(8) *Distribution of proceeds.* The lender must apply all loan payments and collateral proceeds received, after payment of liquidation expenses, to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(9) *Promissory note(s).* A loan note guarantee is issued to the lender for a specific promissory note(s) executed between the lender and the borrower. The lender must retain title to and possession of the guaranteed promissory note(s), retain the lender's interest in the collateral, and retain the servicing responsibilities for the guaranteed loan. The lender is prohibited from issuing any additional promissory notes at a later date for the same guaranteed loan.

(i) The lender may assign all or part of the guaranteed portion of the loan, including interest strips, to one or more holders by using an assignment guarantee agreement for each holder. The lender must complete and execute the assignment guarantee agreement and return it to the Agency for execution prior to holder execution.

(ii) The lender or holder may request a certificate of incumbency and signature from the Agency.

(iii) A holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, assigned under the assignment guarantee agreement. Holders can only reassign the complete block they have received and cannot subdivide or further split their interest in the guaranteed portion of a loan or retain an interest strip.

(iv) Upon notification and completion of the assignment through the use of the assignment guarantee agreement, the assignee succeeds to all rights and obligations of the holder thereunder. Subsequent assignments require notice to the lender and Agency using any format, including that used by the Securities Industry and Financial Markets Association (formerly known as the Bond Market Association), together with the transfer of the original assignment guarantee agreement.

(v) The Agency will not execute a new assignment guarantee agreement to affect a subsequent reassignment.

(10) *Rights and liabilities.* When a guaranteed portion of a loan is assigned to a holder using an assignment guarantee agreement, the holder succeeds to all rights of the lender under the loan note guarantee to the extent of the portion purchased. The full, legal interest in the promissory note must remain with the lender, and the lender remains bound to all obligations under the loan note guarantee, lender's agreement, and Agency regulations applicable to the guarantee.

(i) A guarantee and right to require purchase in accordance with the provisions of this Notice will be directly enforceable by a Holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the loan guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones.



(ii) The lender must not represent a conditional commitment of guarantee as a loan guarantee.

(iii) The lender must reimburse the Agency for any payments the Agency makes to a holder on the lender's behalf under the loan note guarantee, given the lender would not be entitled to the payments had they retained the entire interest in the loan.

(j) *Repurchase from holder.*

(1) *General.* A holder can make written demand on either the lender or the Agency to repurchase the unpaid guarantee portion of the loan when the borrower is in monetary default or when the lender has failed to pay the holder its pro-rata share of any payment made by the borrower within 30 days of the lender's receipt thereof from the borrower. When making written demand on the lender, the holder must concurrently send a copy of the demand letter to the Agency.

(i) The lender is encouraged to repurchase the guarantee, upon written demand of a holder, to facilitate the accounting of funds, resolve any loan problem, and resolve the monetary default, where and when reasonable. The benefit to the lender is that it may re-assign the guaranteed portion of the loan and then continue collection of its servicing fee, if any, when the monetary default is cured.

(ii) When a lender receives a written demand for repurchase from a holder, the lender must notify any other holder and the Agency within 30 calendar days of receipt of the written demand. The lender must inform all parties if the lender will repurchase the unpaid guaranteed portion of the loan from the requesting holder.

(iii) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(2) *Repurchase by lender for loan servicing purposes.* If the lender, borrower, and holder are unable to agree to restructuring of loan repayment, interest rate, or loan terms to resolve any loan problem or resolve any default and repurchase of the guaranteed

portion of the loan is necessary to adequately service the loan, the holder must reassign the guaranteed portion of the loan to the lender. The reassignment must be for an amount not less than the holder's portion of unpaid principal and accrued interest on such portion less the lender's servicing fee.

(i) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(ii) The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain.

(iii) Any repurchase from a holder may only be made after the lender obtains the Agency's written approval.

(3) *Agency repurchase.* If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion of the loan for loan servicing purposes. A holder can submit a written demand to the Agency for repurchase only if the lender declines to repurchase. If a prior written demand was not made upon the lender, the Agency will notify the lender and allow up to seven calendar days for the lender to exercise its option to repurchase as provided in this section.

(4) *Lender does not repurchase.* If the lender does not repurchase the unpaid guaranteed portion of a loan as provided in paragraph (j)(1) of this section, the Agency will, within 30 calendar days after written demand to the Agency from the holder, purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase or the interest termination date, whichever is sooner, less the lender's servicing fee. The guarantee will pay accrued interest to the holder on the loan as determined under this notice.

(5) *Written demand content.* The holder must include in its written demand to the Agency:

(i) A copy of the written demand made upon the lender;

(ii) A copy of the lender's denial to repurchase the unpaid guaranteed portion of the guaranteed loan;

(iii) Evidence of the right to require payment from the Agency as provided by the holder or duly authorized agent. Such evidence must consist of the original assignment guarantee agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan;

(iv) The amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date; and

(v) When the initial holder has assigned its interest, the original assignment guarantee agreement and an original of each Agency-approved reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee.

(6) *Payment.* Unless otherwise agreed upon, payment will not be later than 30 calendar days from the date of demand.

(i) Upon request by the Agency, the lender must promptly furnish (within 30 calendar days of such request) a current statement, certified by an appropriate authorized officer of the lender, of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-calendar-day payment requirement.

(iii) If a repurchase of a guaranteed loan includes the capitalization of interest, interest accrued on the capitalized interest will not be paid to the holder.

(7) *Subrogation*. When the Agency purchases a loan from a holder it assumes all rights that were previously held by the holder.

(8) *Servicing fee*. When the Agency purchases the guaranteed portion of the loan from a holder, the lender's servicing fee will stop on the date that interest was last paid by the borrower. The lender can neither charge a servicing fee to the Agency nor collect such fee from the Agency.

(9) *Accrued interest*. If the Agency repurchases 100 percent of the guaranteed portion of a loan and becomes the holder, interest accrual on the loan will cease until the lender resumes remittance of the pro rata payments to the Agency.

(10) *Establishing interest termination date*. When a guaranteed loan has been delinquent more than 60 calendar days and no holder comes forward or when the lender has accelerated the account, and subject to the expiration of any forbearance or workout agreement, the lender, or the Agency at its sole discretion, must issue a letter to the holder(s) establishing the interest termination date.

(11) *Obligations and rights*. Purchase by the Agency neither changes, alters, or modifies any of the lender's obligations to the Agency arising from the lender's agreement, guaranteed loan, or loan note guarantee, nor does it waive any of the Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the loan note guarantee.

(12) *Accelerated loan*. When the lender has accelerated the loan and the lender holds all or a portion of the guaranteed loan, an estimated loss claim must be filed by the lender with the Agency within 60 calendar days from the date the loan was accelerated.

(13) *Interest termination during bankruptcy*. When a borrower files a Chapter 7 liquidation plan, the lender shall immediately notify the Agency and submit a liquidation plan. The Agency will establish an interest termination date based on the date Interest

was last paid to the lender. When a borrower files either a Chapter 9 or Chapter 11 bankruptcy restructuring plan, the Agency and lender shall meet to discuss the bankruptcy procedure, the ability of the borrower to meet their restructuring plan, the lender's treatment of accruing interest, and potentially establish an interest termination date for the guaranteed loan. If the restructuring bankruptcy Chapter 9 or Chapter 11 is converted to a liquidation bankruptcy Chapter 7 by court order, the interest termination date will be the date of such conversion.

## **I. Statutory and Executive Order Reviews**

### *(a) Paperwork Reduction Act.*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), USDA requested that the Office of Management and Budget (OMB) conduct an emergency review of a new information collection that contains the Information Collection and Recordkeeping requirements contained in this notice.

In addition to the emergency clearance, the regular clearance process is hereby being initiated to provide the public with the opportunity to comment under a full comment period, as the Agency intends to request regular approval from OMB for this information collection. Comments from the public on new, proposed, revised, and continuing collections of information help the Agency assess the impact of its information collection requirements and minimize the public's reporting burden. Comments may be submitted regarding this information collection through the Federal eRulemaking Portal at <https://www.regulations.gov>. In the "Search for Rules, Proposed Rules, Notices or Supporting Documents" box, type "RBS-21-BUSINESS-0036" to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment

period, is available through the site's "FAQ" link. Comments on this information collection must be received by **[INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Title:* Food Supply Chain Guaranteed Loan Program

*OMB Control Number:* 0570-NEW

The following estimates are based on the average over the first 3 years the program is in place.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2.542 hours per response.

*Respondents:* Institutions of higher education, private entities, governmental entities, nonprofits, Indian Tribes, district organizations.

*Estimated Number of Respondents:* 300

*Estimated Number of Responses per Respondent:* 22.6

*Estimated Number of Responses:* 6,782

*Estimated Total Annual Burden (hours) on Respondents:* 17,241

Copies of this information collection may be obtained from Susan Woolard, Regulatory Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave., SW, Stop 1522, Washington, DC 20250; telephone: 202-720-9631; e-mail: [susan.woolard@usda.gov](mailto:susan.woolard@usda.gov). All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*(b) Congressional Review Act*

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 et seq., the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it is

likely to result in an annual effect on the economy of \$100,000,000 or more. Accordingly, there is a 60-day delay in the effective date of this action. Application selection will not begin until after **[INSERT DATE 60-DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Therefore, the 60-day delay required by the CRA is not expected to have a material impact upon the administration and/or implementation of the FSC program.

*(c) National Environmental Policy Act.*

All recipients under this notice are subject to the requirements of 7 CFR part 1970. The Agency will review each guaranteed loan application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

*(d) Non-Discrimination Statement.*

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET

Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) Email: [program.intake@usda.gov](mailto:program.intake@usda.gov)

USDA is an equal opportunity provider, employer, and lender.

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Karama Neal

Administrator

Rural Business - Cooperative Service

Rural Development

[FR Doc. 2021-26693 Filed: 12/8/2021 8:45 am; Publication Date: 12/9/2021]